

TEMPLE LAW QUARTERLY

© 1973 TEMPLE UNIVERSITY OF THE COMMONWEALTH SYSTEM
OF HIGHER EDUCATION

VOL. 46 No. 3

SPRING 1973

THE INTELLIGENCE FUNCTION AND WORLD PUBLIC ORDER

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The intelligence function comprises the gathering, evaluation and dissemination of information relevant to decision-making, and may include prediction based on such information, as well as planning for future contingencies. In short, intelligence involves the acquisition of information and planning in exercise of all five of the intellectual tasks required of decisionmakers.¹ The relation between the intelligence function and community goals is particularly subtle: although intelligence operates within the frame of authorized goals, one duty of effective intelligence is to appraise these goals in the context of knowledge

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This paper represents a chapter in a larger study being prepared by the authors under the title *WORLD CONSTITUTIVE PROCESS AND PUBLIC ORDER*. Earlier chapters have been published as *Theories About International Law: Prologue to a Configurative Jurisprudence*, 8 VA. J.I.L. 188 (1968), and *The World Constitutive Process of Authoritative Decision*, 19 J. LEGAL ED. 253, 403 (1967). The authors reserve all rights.

1. A number of political scientists have become increasingly concerned with complex organizations as circuits for the delivery of information. For a prominent example, see K. DEUTSCH, *THE NERVES OF GOVERNMENT: MODELS OF POLITICAL COMMUNICATION AND CONTROL* (1966). To an even greater degree, general systems analysis is concerned with the organization and delivery of information. See, e.g., D. EASTON, *A SYSTEMS ANALYSIS OF POLITICAL LIFE* (1965). On intelligence in complex organizations, see H. WILENSKY, *ORGANIZATIONAL INTELLIGENCE: KNOWLEDGE AND POLICY IN GOVERNMENT AND INDUSTRY* (1967). While our work draws on many of the insights of these approaches, our thrust is fundamentally different. We are concerned with authoritative decision; our interest in intelligence derives from the dependence of rational decision on knowledge. Our task is to identify the optimum procedures for gathering, processing and disseminating intelligence for constitutive and public order decision; to note divergences from optimum procedures and constellations of conditions that account for such divergences; and to propose alternatives. The configurative focus on decision subjects intelligence objectives to constitutive decision goals. Some relevant perspectives are sketched in Mayo & Jones, *Legal-Policy Decision Process: Alternative Thinking and The Predictive Function*, 33 GEO. WASH. L. REV. 318 (1964).

and, where appropriate, to bring new attention areas, for the purposes of goal clarification, to the focus of decisionmakers.

Intelligence is a critical function at all levels of decision-making, yet its very ubiquity seems to have obscured it from visibility to scholarly inquiry. There is no dearth of historical examples demonstrating the critical importance of reliable intelligence. Kautilya emphasized to would-be leaders the strategic advantage of knowing the enemy's plans,² Joshua used it wisely, if somewhat dogmatically, and Napoleon put the theory to use with devastating effect. Both Stalin and Hitler, in our own day, have shown that the utility of the most accurate and timely intelligence depends upon a decisionmaker capable and willing to use it.³

For the individual human being, rational and realistic behavior is an interaction between explicit or implicit goals and a constant flow of information about the environment, directly from without as well as indirectly from "memory loops," all codified, synthesized and decodified in complex electro-neural processes. The importance of intelligence for goal realization at the community level is readily observable in every value process. In power processes, it is obvious that strategic planning and operations rest upon knowledge of the environment as well as on some indication of adversary plans. In the wealth process, intelligence is a quantifiable product: advance knowledge of events created the Rothschild fortune and "insider" knowledge is daily exploited in bourses about the world. In skill processes, flows of reliable detailed knowledge are equally critical. The same applies to community involvements in the shaping and sharing of well-being and of every other valued outcome.

For authoritative decision-making and execution, the need for intelligence permeates every facet of decision. Promotional activities are undertaken on the basis of intelligence about perceived interests and prescriptions facilitating their realization. The formulation, content and modality of promulgation of prescriptions are all based upon intelligence estimates of public order need and procedures for maximum effectiveness. The invoking of prescriptive norms depends on intelligence about a threatened or actual breach. The applying function is undertaken on the basis of intelligence estimates of the alternative

2. THE KAUTILYA ARTHASASTRA (Kangle ed. 1960). For a historical perspective on the integration of clandestine intelligence in the legitimate diplomatic process, see C. CARTER, *THE SECRET DIPLOMACY OF THE HABSBURGS, 1598-1625* (1964) especially at 109-67.

3. S. KENT, *STRATEGIC INTELLIGENCE* 204-05 (1949); C. FRIEDRICH & Z. BRZEZINSKI, *TOTALITARIAN DICTATORSHIP AND AUTOCRACY* 167-68 (1956). And see *CONDITIONS*, p. 428 *infra*.

effects of executing or acquiescing in particular behaviors. Clearly, the effective performance of each decision phase is intimately bound up with the quantity, reliability, retrievability and exploitability of the relevant intelligence.

The ubiquitousness of intelligence in the execution of every other decision outcome has contributed to its low level of visibility. The function frequently merges into promotive activity, particularly in the world constitutive process where intelligence, disseminated through the instruments of ideological strategy, easily becomes promotion. This plurality of role is underlined by the difficulty of distinguishing between intelligence and propaganda.⁴ The line between contextualized but unpromoted intelligence and contextualized intelligence presented with a degree of advocacy is extremely vague. And intelligence is frequently confounded with appraisal. The distinctive task of appraisal is to characterize developments in the past decision process according to the degree of realization of policy objectives and to apportion degrees of responsibility for the results. Intelligence differs from promotion and appraisal in that its focus is primarily upon information, i.e. statements which are designative rather than preferential.⁵

Broadly conceived, intelligence is concerned with knowledge: statements and propositions which have been confirmed by experience, or to which a degree of probability can be assigned. Information, so understood, includes projections and predictions. Valid intelligence need not restrict itself to "proved" statements, but the probability of accuracy of all statements, projections and predictions must be analyzed. Nor does the term "intelligence" restrict itself to the products of a single discipline. It is indicative of the deep fractionation of thinking about the process of gathering and assembling knowledge for and about human behavior that there is no single word readily available to designate, inclusively, the foci of the natural sciences, the social sciences, the humanities and the arts.⁶ Intelligence may refer to all these cognitive activities.

4. L. MARTIN, *INTERNATIONAL PROPAGANDA* 12 (1957); see generally W. DAVISON, *INTERNATIONAL POLITICAL COMMUNICATION* (1965); B. MURTY, *PROPAGANDA AND WORLD PUBLIC ORDER: THE LEGAL REGULATION OF THE IDEOLOGICAL INSTRUMENT OF COERCION* (1968).

5. This is not to imply that the intelligence function does not deal with community goals. One function of intelligence is the evaluation of goals in projected contexts and the formulation of alternative goal sets for decisionmakers. The point is that though intelligence is constantly involved with preferential sets, it does not adopt one as its own and then proceed to promote it to decisionmakers in competition with others.

6. The point is discussed in W. REISMAN (Rapporteur), *Scientific Knowledge Education and Communication*, WORKING PAPER OF THE INTERNATIONAL JOINT CONFERENCE OF THE AMERICAN GEOGRAPHICAL SOCIETY AND THE AMERICAN DIVISION OF THE WORLD ACADEMY OF ART AND SCIENCE (1970), 184 *Annals of the New York Academy of Sciences* 595 (1971).

Sequential Phases

Sequentially, the intelligence function can be analyzed into three key phases: (1) gathering, (2) processing and (3) dissemination. Each phase is divisible into numerous components. Processing, for example, includes assembling, coding, storing, decoding, retrieving, interpreting and planning. The effectiveness of the total function depends upon the efficacy with which each component is performed.

By gathering we refer to the diverse operations by which raw information is collected.⁷ Gathering may be no more than the observation by an untrained individual of an event, as for example, the observation by a tourist of the concentration and orderly movement of an armored force toward a border area, or the clipping of an article from a foreign newspaper. On the other hand, it may be a highly sophisticated operation, such as the deduction, from a number of equivocal and apparently unrelated events, of a military technological advance; indeed, it may be performed by a programmed, non-human process. Gathering may be carried on within an extremely rigorous normative framework; for example, the gathering of facts and evidence for an adjudicative proceeding.⁸ However, it may transpire in an arena characterized by rudimentary normative demands, as for example, the clandestine collection of intelligence through espionage.⁹ Gathering may be a complex process in which a large number of composite and individual participants partake or it may be completed by the actions of a single person. The common feature of all intelligence gathering is the perception of an event and its delivery to a processing sequence.

The gathering of intelligence is not, however, a mechanical or automatic procedure. The individual receptor—human or mechanical—

7. Observations about aspects of social process are, of course, parts of social process and themselves affect the ongoing flow of events. We may, nonetheless, distinguish between gathering operations which constitute an intense intervention in some segment of social process and those whose degree of passive observation approaches social innocuousness. The degree of intervention of the gathering process has a number of important legal ramifications. For discussion, see p. 394 *infra*. See also J. CARROLL, *SECRETS OF ELECTRONIC ESPIONAGE* (1966). The broader effect of gathering operations must, however, be considered in context and, in particular, in terms of dissemination and uses of intelligence products: data gathered innocuously may be used with brutal effects on the human being from whom it was gained.

8. It is interesting to note that physical scientists have relatively little understanding of the severe normative restraints which often attend social scientific inquiry and, as a result, are often impatient with the secondary and indirect indicators to which the social scientist resorts. A disciplined observational standpoint should make clear that all investigation of social and physical process is subject to normative demands, even, as in the following note, comparatively unstructured systems of hostile interaction.

9. Normative demands do, of course, attend the collection of espionage; reciprocal expectations of authority may be generated between contending parties. In certain circumstances, espionage becomes a functional method of sharing information for common purposes. See p. 394 *infra*.

is inundated by a barrage of sensory stimuli which it is practically incapable of ingesting; were it so capable, its system would be overloaded and broken, or it could not effectively digest what it had received. The receptor exhibits a sensory selection, which enables it to accept a very small segment of the stimulus flow impinging on it. For example, the human being is capable, from a psycho-physical standpoint, of receiving only certain environmental stimuli; and these receptivities may be further attenuated by health, age, acculturation and other factors. Mechanical receptors exhibit a comparable limitation, some of which is to be attributed to deliberate or unpremeditated programming by its human designers. An audial receiver may be limited to a certain range of frequencies and magnitudes; it will not perceive other sounds and will not register visual stimuli whose sonance counterpart falls outside its programmed sensitivity. In short, the phases of the gathering sequence are extremely complicated, and failure to appraise them with contextual methods can seriously diminish the effectiveness of the entire intelligence operation.

Intelligence gathering, it should be emphasized, is not restricted to a focus outside the aggregate decision process served by the intelligence function. Attention must be kept in relationship to the changing images and curiosities of those who are involved in the decision process if the flow of messages is to be kept relevant. The most appropriate conception of the intelligence gathering function is not that of a one-way circuit culminating in dissemination, but rather that of a closed or "looped" circuit into which the needs and responses of the target of dissemination are constantly fed back to gatherers and processors.

By processing, we refer to the many intermediate sequences of the intelligence process prior to dissemination. In the individual, such processing refers initially to the assembly and codification of clusters of unrefined environmental stimuli, then the storage of this information, and finally retrieval and decodification in response to new stimuli. In the individual psychosomatic entity, these processes apparently occur electrochemically in the brain, but the process is as yet only faintly understood. In a large-scale organization, processing is carried on by a variety of techniques that range from the most elementary filing system to storage in enormously intricate computer brains. The recent revolution in intelligence processing can only be understated.¹⁰ In the United States Department of State, for example, foreign area "files" in the pre-World War II period were so modest that a standard joke was that

10. F. MACHLUP, *THE PRODUCTION AND DISTRIBUTION OF KNOWLEDGE IN THE UNITED STATES* (1962); *see generally* R. GREENE, *BUSINESS INTELLIGENCE AND ESPIONAGE* (1966); C. ELLIOTT & R. WASLEY, *BUSINESS INFORMATION PROCESSING SYSTEMS* (1965).

they consisted of N.Y. *Times* and Washington *Post* clippings stuffed into the top desk drawer of the respective bureau chief. In contrast, the potentialities of contemporary technology for processing are staggering.

Dissemination is the final step in the intelligence process. In it the receiver is identified, his needs are assessed and appropriate information is transmitted. As in gathering and processing, dissemination may be an extremely simple, single-step operation; for example, delivery of a file by messenger from one bureaucratic unit to another. On the other hand, dissemination may be an extremely complex operation in which a flow of data about the predispositions of the target is appraised and possible outgoing messages are reformulated accordingly. Different outputs, for example, may be prepared for diplomatic or ideological strategies.

Viewing the intelligence sequences as a whole, two principal points deserve to be emphasized. Both the quantity and the quality of the outflow depend on interdependences throughout the several operations involved. Effectiveness is determined by a steady two-way flow of information about the larger environment as well as about the intelligence process itself. The objectives of primary observers are continually influenced by the presumed needs of the dissemines as well as by the available capacity of processors to codify, store and retrieve data. Comparably, the disseminators are constantly affected by what has gone before and by their images of the recipients.

A second outstanding feature of the whole intelligence process is the potential diversity of the persons who are adapted to particular operations. In some circumstances, one individual may necessarily perform every task. More typically, intelligence agencies are organized to utilize an enormous network of individuals and groups who act jointly and in sequence. Particular gatherers, processors or even disseminators may have little or no awareness of the chain of which they are a link. We will treat intelligence generally and globally, for our present scope does not permit each sequence to be given systematic consideration. Yet where sequential phases are critical, they will be noted.

I. THE CLARIFICATION OF BASIC CONSTITUTIVE POLICIES

If the policies affecting the constitutive structure and functions of the world community are to move toward the realization of at least minimum public order, the intelligence component of the decision process must harmonize as far as possible with criteria designed to provide the pertinent flow of communicated messages to all who participate

in authoritative control. Among relevant criteria, we cite in particular the goals of dependability, comprehensiveness (within which we include systematic contextuality), selectivity (relevance), creativity, openness, availability and economy. Trend studies indicate that a low measure of performance in relation to any one of these goals has limited both the minimum effectiveness as well as long range optimum aims of intelligence.

Dependability

An intelligence process is dependable when the messages delivered to the recipients are realistic and when the recipients perceive them as such. Among the factors that condition the realism of the output are the estimates by the intelligence suppliers that their audiences are able and willing to recognize and accept realistic communications. If the recipients are to perceive communications as credible, their image of the source must acknowledge competence and good faith.

When dependability is conceived as an interpersonal relationship, certain criteria of high performance become salient:

1. The source is competent. An intelligence agency will utilize the services of those who have the training and experience to make a realistic statement.
2. The source is motivated to supply realistic statements. Conscious and unconscious motivations are both involved and require evaluation.
3. Competence must be applied to the pertinent situation. The question is whether there was an opportunity to use appropriate methods and whether they were actually employed.
4. Statements must be accurately transmitted.
5. Recipients must be able and willing to acknowledge the credibility of realistic statements.

In order to maximize their respective value positions, intelligence producers and intelligence consumers have resorted to converging procedures, which have resulted in functional standards for reciprocal dependability. Among the expedients adopted by intelligence organs which have a bearing on reliability are competitive examinations, directed at ascertaining optimum levels of skill, natural capacity and psychological stability. Personnel are usually committed by oath to loyalty and typically grasp the authoritative and controlling code of

conduct to which they are expected to conform. The dependability of their intelligence activities is subject to constant appraisal. These arrangements, which are commonplace at the national level, are also adopted by international fact-finding commissions. A commission's statute will set out criteria for personnel choice, the necessary level of impartiality, and specify the mandatory techniques for data collection, appraisal and formulation.¹¹ In formal legal processes, in which data is collected and tested in adversarial procedure, comparable standards are expressed in principles of admissibility, credibility and relevance.¹²

In unorganized processes, standards are frequently set by the intelligence producers themselves, both as an expression, in a group code, of personal demands for quality and integrity as well as for strategic purposes: the value of intelligence and the ongoing valuation of intelligence producers are commensurate with their dependability. It is no surprise that one may speak of a code of honor among spies, for if they fail to project an image of dependability, they will have abjured their most important professional base and will not be retained by intelligence consumers. Assessors, pollsters, valuers, scientific investigators and, indeed, any skill group transacting intelligence set and police levels of dependability for comparable reasons.

Comprehensiveness

It is a commonplace that perception is not a random process but is based upon and facilitated by internal and environmental data organization, by a process of relation, of *gestalt*. The accuracy and utility of intelligence in an increasingly interdependent world depend directly upon a comprehensive and systematic contextuality. This is based upon a conception of social process as a vast manifold of events, interacting and interstimulating, the meaning, relevance and susceptibility to influence of any part of which are dependent upon its relation to the whole.

The specifications of comprehensive coverage follow from the problem-solving character of decision. The flow of communications that reaches the organizations or individuals who shape the world decision process must achieve:

1. Inlusiveness in terms of goal. Every participant pursues values of every kind; hence, the map supplied by intelligence services,

11. See, e.g., 1907 REVISED HAGUE PEACE CONFERENCE, arts. 9-36; see generally, W. SHORE, *FACT-FINDING IN THE MAINTENANCE OF INTERNATIONAL PEACE* (1970).

12. For a comprehensive presentation of such rules and some comparative evaluation, see J. WIGMORE, *EVIDENCE* (2d ed. 1935). On the implications of accuracy of this type of proceeding, see J. MARSHALL, *LAW AND PSYCHOLOGY IN CONFLICT* (1966). Frank, *Facts and Guesses* in B. KRISTEIN, *A MAN'S REACH* 180 (1965).

overt or covert, covers the ups and downs of political power, the changing levels of wealth production and consumption, and similar modifications in the accumulation and distribution of enlightenment, well-being, skill, affection, respect and rectitude. Failure to emphasize any value—such, for example, as scientific enlightenment—may lead to a subtle downgrading of scientific outcomes among the value priorities of decisionmakers. Or failure to reiterate the facts of inequality may have a similar effect on the everyday emphasis that is put on policies designed to realize the value-distribution required by considerations of human dignity.

2. Inclusiveness in regard to trends. The decisionmakers in one part of the globe may allow themselves to float on clouds of euphoria if their attention is directed almost exclusively to favorable changes in their value position. If the intelligence services do their job realistically attention will be directed to the negative as well as the positive.

3. Inclusiveness in the presentation of conditioning factors. The political myth of every significant participant includes standard “explanations” if things go well or badly. In the latter case the “scapegoat” may be the machinations of the foreign “imperialist” or international “agitator.” One of the principal responsibilities of adequate intelligence services is to examine a comprehensive set of possible explanations and to include the most likely interpretation of events in their output.¹³

4. Inclusiveness of projections. Since all decisions point toward the future, one task of the intelligence suppliers is to avoid surprises that come from incomplete projection of probable sequences of future development.

5. Inclusiveness of policy alternatives. It is generally admitted that decisionmakers tend to divert their attention from proposals that seem to contradict their assumptions. Hence, the requirement of inclusiveness calls for a stream of intelligence in which the whole range of proposed policies and strategies obtains representation.

Selectivity

The body of potentially relevant intelligence is so enormous, and the man hours of attention are so few, that one of the principal criteria

13. Thus Professor Wasserman: “The only satisfactory basis for intelligence prediction is the universalizable or objective standard of estimating the actions of other States *rationally in terms of their assumptions*.” Wasserman, *The Failure of Intelligence Prediction*, 8 POLITICAL STUDIES 157, 168 (1960).

of a sound intelligence operation refers to selectivity. A comprehensive viewpoint sensitizes the data gatherers, processors and disseminators to the landscape as a whole and paves the way for scrutinizing with particular care the features that merit selective notice. Working criteria include:

1. Relate intelligence to perceived problems. The principal concern of any operation is with the client. If the client is to give serious attention to what is reported, the messages must appear to deal with the issues that press for resolution. When the structure of the UN Security Council is under attack it is evident that news which reports the extent of criticism, defense or indifference is relevant. The obligation of the intelligence function goes beyond the furnishing of information about problems currently recognized by the client to the task of making the recipient aware of developments that concern him but of which he is presently unaware. The perceiver of the problem in this case is initially the intelligence operators themselves.

2. Give priority to policy alternatives. Some problems are so immediate and concern so many people with so many values at stake that intelligence services are most helpful when they concentrate on succinct presentations of possible objectives and strategies of action. The statements chosen for transmission should be those that have been disciplined by exposure to the procedures of the intelligence operation which assess available material, not only for reliability, but for relevance.

Timeliness

A criterion that is intimately bound up with selectivity but which is of such great importance for the whole decision process that it deserves separate billing is timeliness. It is, after all, necessary for the world community to depend on a properly functioning intelligence operation for the discovery of changes that signify an incipient emergency. Less dramatic and exceptional is the requirement that whatever is needed should be promptly made available whenever it is needed to whoever needs it. Whether the arena is promotional, prescriptive, or relatively specialized to some other decision function, the implacable march of time sets a limit on research, on preparation, on deliberation: moments of decisive significance come and pass, and they often leave in their wake a train of missed opportunities. Poor intelligence work failed to locate the text of a crucial agreement, to provide a telling summary of research on pollution, to indicate the changing sentiments of a seemingly recalcitrant coalition—and so on and on through the “might have beens” of human history.

Creativity

We have emphasized the forward-looking, planning role of the intelligence function; and this is to underscore the creative challenge implicit in the operation. At no step in the decision sequence is the exercise of creativity more apparent or more contributory than at the phase of planning. To plan in the constitutive process is to clarify inclusive goals and particular objectives and to invent strategies that allow the world community to move from where it is at any given moment to a preferred future state of affairs.

Among the working guides to creativity are these:

1. Cultivate diversity of approach to planning problems. This implies the use of interdisciplinary talent, which increases the probability that a new potentiality may be recognized. In our interactive, accelerated world, the realms of the physical, biological and cultural are simultaneously implicated to a degree that requires continual surveillance by multi-disciplinary teams who are concerned with the technical, administrative, legal and support strategies required by massive change. A new device for detecting nuclear weapons, a novel method of sharing corporate control, a jurisprudential doctrine that emphasizes expectations, a political science research that locates the most innovative elite elements: these are among the contributions that may release creative solutions to problems of transnational structure. In addition to multi-disciplinary orientations it is obvious that many other diversities are worth bringing into intelligence planning: differences of culture, interest, personality, sex or class; differences of official or unofficial experience and so on.

2. Institutionalize the challenging of assumptions. The Roman Catholic Church has long utilized the Devil's Advocate as a means of bringing to the attention of decisionmakers the data and the arguments that might otherwise be neglected or de-emphasized. The procedure can be adapted to the internal decision process in intelligence organizations.

Openness

In the light of the pervading goal of human dignity which we project for our preferred world public order, an unqualified openness in the gathering and dissemination of decisionally relevant intelligence is a necessary long-range criterion. Openness is an essential both in terms of the maximum effectiveness of the intelligence process itself and in terms of the greatest possible participation of all individuals in world constitutive decision.

The criteria include:

1. Openness to available intelligence.
2. Openness to contribution to intelligence.
3. Mobilization of demand for participation in the intelligence process.

The criterion of openness is a commitment against monopoly and an endorsement of participation in the shaping and sharing of the total stream of intelligence. Among analysts of government it is commonplace to emphasize the fundamental character of knowledge as a base of power, as indeed of values that are in any degree dependent on a realistic map of the social and physical setting.¹⁴ A persistent disparity between the quantity and quality of intelligence made available to elites on the one hand and to rank-and-file members on the other is a reliable indicator of elite monopolization of power and of other value assets.

A striking fact about monopolistic practices in intelligence operations is that they are so often self-defeating.¹⁵ When barriers of secrecy are imposed in crisis situations, it may be possible for a centralized elite to obtain the advantages of surprise. Yet secrecy so often breeds further secrecy, and secrecy so characteristically generates conscious and unconscious interest in omission, distortion and routine that the monopolist may overlook the urgency of altering the structures and functions of the system of public order with which he is identified.

We stressed the importance of interpreting the task of intelligence operations to include the task of mobilizing general participation at all stages of the process. Such motivation is indispensable if the members of the body politic are to keep themselves informed. Many factors tend to result in attitudes of indifference or aversion to the effort required to keep adequately abreast of significant developments. If intelligence results are presented to recipients in a dull and routine fashion, the consequence may be less and less insistence on obtaining an intelligence supply that meets the emergency needs of the world community. Modern technology is not only rich in devices that facilitate the gathering, storage and retrieval of data but has also developed many media of communication—print, film, television—that are well adapted to the

14. See, e.g., D. PRICE, *THE SCIENTIFIC ESTATE* (1965); S. KENT, *supra* note 3, at 3-10; H. WILENSKY, *supra* note 1, at 3-7. Under certain circumstances, the symbols of knowledge may perform ritualistic, even magic functions, quite separate from the storage or dissemination of data about social process.

15. H. WILENSKY, *supra* note 1, at 130-72; E. SHILS, *THE TORMENT OF SECRECY* 153-91 (1956); M. MCGUIRE, *SECRECY AND THE ARMS RACE: A THEORY OF THE ACCUMULATION OF STRATEGIC WEAPONS AND HOW SECRECY AFFECTS IT* 212-32 (1965).

task of arousing audience interest by vivid and concrete messages and styles of presentation.

Mobilization is significant for the shapers as well as the sharers of intelligence. One never knows in advance which individual or organization will occupy positions in the social process that enable them to observe events that ought to be reported to the collectivity. Officials who snub volunteers, or who interview in a perfunctory manner, are damaging the roots of an operation whose nourishment may come from the wider, even humbler, layers of the whole community.

The point is most apparent, perhaps, in traditional societies where many strata are accustomed to perceive themselves as outside the decision process of the larger community. Among the tribes or the castes of many localities the inhabitants are well-aware of festering grievances that may erupt in challenges to public order. Yet the lack of regular political participation has confirmed an image of the self as lacking in salience to the mysterious umbrellas of public authority and control. "Knowing their place" they comply humbly and obediently—and bide their time. In a society so structured, the narrow gathering but wide dissemination of intelligence may be socially integrative in that it reiterates the symbols of community. At the same time it will be democratically regressive, in that by enhancing a status quo already sanctioned in popular lore, it narcotizes any incipient demands to participate fully and equally in processes of authoritative decision.

Nor will an unrestricted flow of intelligence engender constitutive participation by those personalities which, because of personal psychic experience, are incapable of viewing themselves as equal participants in the community process or are so ambivalent in regard to all authority that they can fulfill neither active nor passive authority roles. The emphatic point, common to all these disabilities, is that from a constitutive perspective, the preferred goal of openness cannot, in itself, provide assured enhancement of genuine power sharing and wider participation in decision. Intelligence will only approximate these goals when it operates in a context of constitutive and public order structures, at all levels of global interaction, which facilitates the development and maturation of personalities capable of absorbing intelligence products into a personal conceptual framework, which includes stable notions of their own active and legitimate participation in processes of authority and power.

Economy

The intelligence needs of the contemporary world constitutive process are enormous; the scope is spatially coterminous with the very

limits of the earth-space arena, extends temporally from the distant past into a future whose foreseeability is a function of man's capacity to engage in systematic prediction, and ranges over every critical value process in diverse and changing contexts. But resource allocation for the intelligence process is necessarily limited and must compete with the legitimate needs of all other constitutive and public order functions.

As matters stand today the divided structure of the world arena stimulates and maintains vast intelligence structures whose operations are transnational but whose beneficiaries are, as far as possible, more parochial. These organizations are monuments to the waste of resources inherent in the present system of world public order, and provide some indication of the economies that can be realized when hostile or duplicative surveillance are superseded, and assets are re-directed to the direct service of common interests.

II. TRENDS IN PAST PERFORMANCE

Trends in past performance of the global intelligence function represent only the most fragmentary approximation to the preferred constitutive goals which have been recommended. The aggregate production of intelligence has increased markedly, but increase in the quantity and relevance of disseminated material has been less marked. The function continues to be more exclusive than inclusive in reach and control. Trends can be most conveniently summarized in terms of the seven components of any function.

A. *Participants*

Those who participate in processes of constitutive intelligence fill two concentric roles: intelligence producers and intelligence consumers. These roles necessarily overlap, even on the individual level, and it is important to mark this convergence as a dominating aspect of the intelligence function. All behavior is in part a response to continuous flows of contextual information, which varies widely both in its accuracy, relevance and timeliness as well as in the capacity of the intelligence user to comprehend and exploit it. Thus, even the participant who views himself as an intelligence gatherer is constantly incorporating the results of his activity into his present and projected behavior. In short, intelligence gatherers, no matter what their self-perceived role and no matter what the manifest target of their activity, are their own initial consumers. A critical facet of intelligence activities is their reflexive, feed-back properties. The professional intelligence agent, the mass media, the commercial intelligence unit and so on undergo indi-

vidual perspective-shaping by their participation in the process. Parallel results transpire if the process is considered sequentially, in terms of gatherers, processors and disseminators. The disseminator-promoter, who consciously manipulates the intelligence products at his disposal in order to form certain perspectives in the minds of his target audience, is, in varying degree, propagandized by his own propaganda.

We consider below in systematic form the major participants in the world constitutive function of intelligence.

1. *Nation-States*

The revolution in intelligence gathering is felt most strongly in nation-state intelligence activities. Disposing of a high degree of political control within their territories and capable of marshalling vast resources for the collection of intelligence, the contemporary nation-state has always been one of the foremost gatherers and processors of constitutive intelligence. There is an enormous increase in the numbers of individuals involved in the various sequences of the intelligence function, an extension of specializations and a proliferation of technological devices.¹⁶ In crisis periods, intelligence has acquired a dimension of heightened importance in the public mind, moving from the position of a service to decisionmakers to a highly vulnerable political issue. Indeed, intelligence scandals have rocked and brought down a number of western governments in the past decade.¹⁷

Much attention has been directed to the security intelligence agencies of modern governments: CIA and NSA in the United States, M.I.5 and M.I.6 in the United Kingdom, the S.I.S. in France, the NKVD in the U.S.S.R. and so on. Yet these agencies perform only a fraction of the intelligence gathering, processing and dissemination of modern government. Less glamorous, but no less effective are the vast intelligence gathering activities of a variety of government departments and agencies. The departments of commerce, industry, labor and the treasury and their functional equivalents in any governmental system perforce gather and process vast quantities of information about the world constitutive process as a necessary condition of their own decision-making.¹⁸ Defense and related departments obviously base their

16. F. MACHLUP, *supra* note 10, at 295-322, 380-400; for a dramatic inventory of surveillance techniques, see V. PACKARD, *THE NAKED SOCIETY* (1964).

17. The Philby, Burgess and McLean case and the Profumo case in the United Kingdom engendered enormous internal political consequences; they also shook external alliances which coordinated the sharing of security intelligence. See generally B. PAGE, D. LEITCH, P. KNIGHTLEY, K. PHILBY: *THE SPY WHO BETRAYED A GENERATION* (1969). A comparable scandal was set off by the defection of Martin and Mitchell in 1960, see S. DE GRAMONT, *THE SECRET WAR* 404 (1962).

18. S. KENT, *supra* note 3, at 104-15; H. RANSOM, *CENTRAL INTELLIGENCE AND NATIONAL SECURITY* 94-130 (1958).

own planning on an interpersonal model in which knowledge of the plans and practices of others is an absolute requisite. Foreign Offices continuously collect and process intelligence about the postures and plans of other nations. Special task forces are regularly formed with special mandates to investigate particular areas of global interaction.

A crucial modality of intelligence gathering for the nation-state is found in the network of diplomatic personnel dispersed throughout the globe. In addition to serving as a conduit of communications to foreign elites, a major function of the diplomatic and consular corps is to collect intelligence about the host state, an activity which is facilitated greatly by the institution of diplomatic immunity.

Although the policy, planning and operating officers of the federal government (both civilian and military) are the primary users (or consumers) of the finished intelligence product, they themselves are often important gatherers and producers. As men who work in the world of affairs they turn out, as by-products of their main jobs, large amounts of material which is the subject matter of strategic intelligence. The best case in point is the foreign service officer in a foreign post. His main job is representing the United States' interest in that country, but a very important by-product of his work is the informational cable, dispatch, or report which he sends in. Not merely the informational cable but the so-called "operational" cable as well. . . . the foreign service officer, although not specially trained as an intelligence man, is by virtue of his location and talent often a valuable and effective purveyor of intelligence.¹⁹

Gathering extends from the innocuous reading of the local press and professional journals to a more active collection in the field. It is customary to append to a large mission military attachés of the various services as well as experts in other fields in which the sending state has an interest. Since reciprocity is the core of legation and mission size, the host state acquires comparable rights in the territory of the sending state. Although they are not mentioned in the Vienna Convention or in the major texts,²⁰ these intelligence activities are accepted as a correlative purpose of diplomatic activity and are tolerated with a high

19. S. KENT, *supra* note 3, at 9-10; H. RANSOM, *supra* note 18, at 119-30; Evans, *Research and Intelligence: The Part They Play in Foreign Policy*, FOREIGN SERVICE JOURNAL 24 (March 1957).

20. Vienna Convention on Diplomatic Relations, Article 3(1)(d) (1961), 500 U.N.T.S. 95, 98; *see also* *Espionage Activities of Personnel Attached to Embassies and Consulates Under Soviet Domination in the United States*, Hearings Before the Subcomm. to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Senate Comm. on the Judiciary, 82d Cong., 1st & 2d Sess. (1952).

degree of latitude. Expulsions of diplomats for intelligence activities have usually been motivated by clear breaches of domestic espionage laws, in particular, conspiring with nationals of the host state to steal official information.²¹ The normative frame provided by such laws are the outer limits of diplomatic intelligence gathering.

The richness of national constitutive intelligence operations has been undermined by a number of recurring factors. In an atmosphere of crisis, the security value of the intelligence which has been collected has frequently impelled its general suppression and restricted dissemination to a limited elite coterie. "Need to know" policies have often retained the processed intelligence within the agency or department which is ultimately obliged to use it. A consequence of this pattern has been the attenuation of possibilities of disengaged appraisal and a merger of intelligence with promotion and application.²² Hence the real utility of intelligence has been eroded. In particular, the open utilization of intelligence by all for realization of the common interest has been sacrificed.

2. *International Organizations*

The bureaucratic structures of the major international organizations engage in numerous intelligence activities. At the same time, many of these structures collect and disseminate intelligence by complex osmotic strands, which frequently prove extremely effective despite their low level of visibility. Thus, the Secretariat of the United Nations, to choose only one example, provides formally within its cellular bureaucracy for the gathering, processing and disseminating of constitutive intelligence. The Codification Division of the legal affairs section, for example, is specialized to processing specific material. The United Nations Press Office acts as a formal disseminator, and maintains facilities through which intelligence products are channeled quickly into nation-state media.²³ But in addition to these formal administrative units, Secretariat personnel are constantly involved in intelligence functions which do not appear labeled under this title. Within the formal structures of the Organization, Secretariat representatives sit in a variety of conferences and committees. An inevitable product of their presence is the gathering and channelling back

21. Some sense of the complexity of and requisite delicacy in responding to these cases is found in L. TOBIASSEN, *THE RELUCTANT DOOR: THE RIGHT OF ACCESS TO THE UNITED NATIONS* 308 (1969).

22. H. WILENSKY, *supra* note 1, at 48-57 and especially at 24-34; *see also* C. P. SNOW, *SCIENCE AND GOVERNMENT* 46, 104 (1960).

23. *See* A. SZALAI, M. CROKE & ASSOCIATES, *THE UNITED NATIONS AND THE NEWS MEDIA* (UNITAR, 1972).

of information about proceedings in which they act as participant-observers. As the scale of their participation in these micro-arenas increases, they become disseminators of Secretariat views. Regional offices of the Organization, strategically placed about the globe, perform comparable functions.

Organs of international organizations are frequently directed by their membership to perform specific intelligence functions directly related to constitutive decision. Thus, the Secretary General maintains a directory of the status of multilateral conventions: adherences, reciprocal rights and terminations.²⁴ This service provides a ready indicator of the extent of agreement to formal constitutive prescriptions. The Economic and Social Council, and in particular, the network of regional economic commissions, GATT, UNCTAD and OECD are involved in enormous intelligence activities regarding transnational wealth processes. The IMF, the International Bank and the regional banks collect, process and disseminate information about transnational monetary trends and the fluctuations of national economies. UNESCO's intelligence activities relate to trends in enlightenment, skills and related value transactions.²⁵ The World Health Organization collects and disseminates information about trends in transnational well-being,²⁶ and the FAO collects and processes trends in regard to the world's food resources.²⁷

These selected examples of organizational intelligence activities indicate that the aggregate activities of contemporary international organizations provide a rather comprehensive and timely flow of intelligence about the world constitutive process. Perhaps more significant, the available structures represent institutional potentialities for a highly effective constitutive intelligence function. The major shortcomings to date have been the lack of a comprehensive conception of the goals and ramifications of constitutive intelligence, which has limited the scope and focus of the activities and, equally pernicious, the absence of a centralized clearing house capable of absorbing and consolidating the many fragmented intelligence pictures into a coherent, contextual and comprehensive presentation of the requirements of the entire constitutive process. Without such a broad frame, the true relevance of many of the individual intelligence efforts is lost.

24. On the legal problems involved, see W. REISMAN, NULLITY AND REVISION 381-83 (1971); and see Right of Passage Case [1957] I.C.J. 125.

25. For a brief survey of the scope which UNESCO seeks, see REPORT OF THE SECRETARY-GENERAL, PROBLEMS OF THE HUMAN ENVIRONMENT, U.N. Doc. E/4667 at 54-58 (1969).

26. *Id.* at 58-63.

27. *Id.* at 49-54.

We have concentrated on constitutive intelligence activities of the international organizations. It is appropriate to note briefly some organizational activity in the collection of public order intelligence since it demonstrates techniques of institutional participation and, in certain cases, provides peripheral constitutive intelligence. Fact-finding commissions and commissions of inquiry antedate the rise of contemporary international organization.²⁸ These practices have been used by nation-states on bilateral and plurilateral bases and by 1899 a major effort at the codification of their procedure succeeded and gained wide adherence.²⁹ The technique of the fact-finding commission and the commission of inquiry has been adopted by many international organizations and put to use in diverse contexts. The General Assembly of the United Nations, for example, has created commissions of inquiry and directed them into the field to collect intelligence about a variety of public order questions.³⁰ A major precedent produced by this activity has been the incipient legitimization of organizational intelligence collecting within the territorial bounds of member-states. A variant institutional form used by the International Labor Organization is the Committee of Experts, formed in 1957. The Committee receives the formal national reports to the ILO and, in addition, solicits information from both local employer and worker organizations. This fact-finding device appears to have been remarkably successful.³¹

Clandestine intelligence activities are usually associated with nation-states. It should, however, be no surprise that as activities requiring secrecy in intelligence gathering become increasingly transnational, formal international organizations find it necessary to resort to clandestine intelligence. International action against the world narcotics trade, for example, requires a relatively secret intelligence network in order to be effective. In the future, other forms of international crime will presumably inspire counterpart official secret activities.

28. See W. SHORE, *supra* note 11 and L. SOHN, *THE FUNCTION OF INTERNATIONAL ARBITRATION TODAY* (1963). See also *The Dogger Bank Incident*, 1 Hague Recueil 17-18, Hague Court Reports (Scott) 403 (1916).

29. 1899 HAGUE PEACE CONFERENCE, arts. 9-14; 1907 REVISED HAGUE PEACE CONFERENCE, arts. 9-36.

30. See U.N. CHARTER art. 34. The investigative capacity is discussed in L. GOODRICH & E. HAMBRO, *CHARTER OF THE UNITED NATIONS* 245 (1949). See also L. GOODRICH & A. SIMONS, *THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* 176 (1955). One of the earliest mandates for fact-finding given by the Security Council is found in 1 U.N. SCOR 1st ser. No. 28 at 700-1 (1946).

31. E. HAAS, *BEYOND THE NATION-STATE* 250-52 (1964); E. LANDY, *THE EFFECTIVENESS OF INTERNATIONAL SUPERVISION* 19-34 (1966).

3. *Political Parties and Political Orders*

The gathering of intelligence by political parties and political orders is a regular accompaniment of their normal participation in decision activities. The unique characteristic of a political order, of course, is its self-entertained notion of its exclusive legitimacy of power. Accordingly it collects and processes intelligence as a base of its own power and does not disseminate it beyond its own structural borders. The Communist party maintains a vast intelligence network throughout the world. During one period, the network was publicly acknowledged as the Cominform and served as a two-way conduit in every country in which it operated. Intelligence gathered was channeled back to the Soviet elite. At the same time, intelligence which had been processed for dissemination by that elite was channeled back into the foreign media through the same network.³² The National Socialist political order operated a similar intelligence system drawing on sympathizers and irredentist and overseas ethnic Germans.³³

A number of features appear to be characteristic of intelligence activities of political orders. Foremost is the monopolization of intelligence for the aggrandizement or maintenance of political power. A political order does not view itself as one part of a collaborative political process, but rather as the process or, pro-futuro, as the exclusively legitimate heir to control of the process. With these substrate perspectives, the political order's notion of maximization of values is not the supplementary distribution of intelligence for power sharing purposes, but rather the regulated dissemination of intelligence for purposes of improving its own value position. In this respect, the disseminative sequences of intelligence products by political orders are invariably propagandistic or promotive; even truthful intelligence which is disseminated publicly is selected from a total context in order to engender certain desired perspectives on the part of the target audience. A second feature of political orders is the rather constricted use which their perspectives seem to impose upon their exploitation of intelligence. Evidently there is an inverse relation between rigidity of ideological outlook and capacity to make full use of a wealth of gathered intelligence.³⁴ Other factors, such as crisis, with its time pressures, will of

32. E. BARGHOORN, *SOVIET FOREIGN PROPAGANDA* (1964); J. HULSE, *THE FORMING OF THE COMMUNIST INTERNATIONAL* (1964).

33. P. LEVERKUEHN, *GERMAN MILITARY INTELLIGENCE* (1954).

34. Hitler's failure to make use of intelligence available to him has been discussed earlier. Stalin fell prey to the same hubris: A. ORLOV, *HANDBOOK OF INTELLIGENCE AND GUERRILLA WARFARE* 9-11 (1963). *But cf.* B. WHALLEY, *THE BARBAROSSA CODE* (1973) discussed p. 445 *infra*. Unquestionably, political leaders of the West have exhibited the same weakness. In addition to this pathology, refusal to heed intelligence estimates may derive from a complex of other factors, many of which are, in context, plausible.

course act detrimentally upon the exploitation of intelligence. However, the most obvious phenomenon is the retardation of intelligence exploitation in consequence of rigidified ideology. There is evidence now available that neither Stalin, nor Hitler nor Mao could process and absorb critical intelligence which was brought to their attention.³⁵

National and international political parties gather intelligence in a variety of institutionalized and non-institutionalized patterns. Periodically, large parties engage in formal and highly institutionalized intelligence operations. The Democratic and Republican parties in the United States, for example, customarily hold open hearings before each presidential election for purposes of framing the party platform. Witnesses who claim expertise in various areas appear to provide intelligence and to promote policies for the consideration of the party. Particularly noteworthy from the standpoint of the world constitutive process is the emerging trend among opposition parties to finance commissions that are sent abroad to gather intelligence on which opposition policies are grounded. Parties often call upon loyal members who are strategically placed in official and unofficial structures to furnish intelligence which is not otherwise public.

Because a political order may include among its power assets the resources of entire nation-states, political orders may, in certain circumstances, rank with nation-states as among the foremost participants in the world constitutive intelligence process. True political parties, on the other hand, must engage in more diffuse and sporadic intelligence activities because they lack large resource bases. On the other hand, insofar as they are not associated with official power structures nor committed to firm policy, they may be more receptive to and capable of utilizing whatever intelligence is gleaned.

4. *Pressure and Interest Groups*

Transnational and national pressure and interest groups are notable intelligence producers and consumers. Their attention is generally limited to the value pursuit in which they specialize, but within this limit they frequently have the greatest knowledge. International cartels, for example, may monopolize not only economic decision in a sub-

35. S. KENT, *supra* note 3, at 204. Mao's "great leap forward" was presented with detailed expert objections, but nevertheless pressed to its disastrous end. The apparent incapacity to adopt and act on certain types of information in an intensely ideological system can be attributed to more subtle social factors. Where, for example, intelligence requires a change in elite structure or elite personnel, those elites who will probably suffer deprivation will find ways of rejecting the intelligence. In charismatic systems, one base of power of the leader may be his "gift" for making the right decision. Hence, he may be obliged to exercise and sustain this base of power even if a wrong decision (in an objective sense) must be taken.

sector of wealth, but they may have the only comprehensive and realistic information about the economic and other consequences of the policies pursued. An organization such as the International Air Transport Association, which among other activities sets rate and tariff guidelines in international civil aviation, has been said consistently to suppress the vast amount of detail about costs and effects which it regularly gathers. Air carriers clarify policy in a private arena and thereafter disseminate their selected version of reality in public international and national decision arenas.³⁶ Other international cartels practice similar monopolization of the intelligence relevant to their activities.

Pressure and interest groups do not always enjoy exclusive control of essential intelligence. In broadest perspective, the world arena is pluralistic, composed of diverse groups pursuing different values. Many of these groups must draw upon whatever base values are at their disposal in order to meet their intelligence needs. The interplay among these organizations generates a flow of publicly accessible information in open arenas at every level of the world community. A rather regular feature of parliamentary democracies is the institution of lobbies conducted by pressure and interest groups operating directly upon legislative processes.³⁷ A large part of these activities is the dissemination of intelligence.³⁸ While lobbying is frequently abused and is constitutively marred by the absence of explicit normative structures, its aggregate effect is provision of a rich flow of intelligence to prescriptive processes. Significantly, lobbying is an emergent trend in organized international arenas. An increasing number of non-governmental organizations (NGO's) seek and acquire consultative status in reference to the principal organs of the United Nations, and from this position disseminate intelligence to the international community in the value areas in which they are interested.³⁹ Other national and international NGO's gather and disseminate information through non-official communicational channels which ultimately reach national and international decisionmakers.

36. K. PILLAI, *THE AIR NET: THE CASE AGAINST THE WORLD AVIATION CARTEL* (1969).

37. Some sense of the range of international lobbies and pressure groups can be gained from L. WHITE, *INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS* (1951); J. LADOR-LEDERER, *INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS AND ECONOMIC ENTITIES* (1963), and see note 57 *infra*.

38. See generally, *INTEREST GROUPS ON FOUR CONTINENTS* (H. Ehrmann ed. 1954); H. WILENSKY, *supra* note 1, at 124-25. The most comprehensive listing is found in *THE YEARBOOK OF INTERNATIONAL ORGANIZATIONS* (12th ed. 1969); almost 2000 non-governmental organizations are registered there.

39. According to the most recent survey available, 10 organizations have been accorded status (Category) A, 131 status (Category) B and 219 status (Register) C. *EVERYMAN'S UNITED NATIONS* 19-20 (8th ed. 1968).

There are, unfortunately, few detailed studies of contemporary vintage of the performance of decision functions in the constitutive process by NGO's. The available data would, however, suggest that the intelligence role of these associations is tremendous. There is no value process which is not well represented by such organizations.⁴⁰ Nor, within each value process is there utter homogeneity of outlook. Within the several sectors of the social process, pressure groups pursue partially integrated, partially antagonistic interpretations of interest. These diversities ensure some measure of policing in terms of the common interest of the wider community. If no organization is sufficiently impartial to supply objective intelligence, the aggregate flow of conflicting versions may nevertheless facilitate the separation of fact, falsehood and fantasy from one another. Insofar as these groups permit direct individual participation in the world constitutive process, their immediate and long-range psychological impact on the development of a common identity is incalculable. Constitutive prescriptions facilitating the intelligence operations of these organizations are a matter of overwhelming international interest.

5. *Private Associations*

Private associations with transnational interests frequently perform intelligence operations as an activity ancillary to their dominant concern. We have had occasion to mention the intelligence gathering and disseminating activities of the Roman Catholic Church.⁴¹ Comparable activities are performed by other ecclesiastical organizations, including rectitude conglomerates which retain their theological differences while formulating convergent objectives in the world constitutive process. The World Council of Churches, the Protestant Assemblies, the Jewish organizations and most recently the Buddhist organizations play an increasingly prominent world political role.⁴²

International business associations regularly collect intelligence commensurate with their preoccupation with wealth and the geographic scope of their activities. Insofar as their actual or planned operations impinge upon the world constitutive process, they may utilize the information which they have collected for the purpose of influencing

40. See note 57 *infra* and in particular, L. WHITE, *supra* note 37, and J. LADOR-LEDERER, *supra* note 37.

41. McDougal, Lasswell & Reisman, *The World Constitutive Process of Authoritative Decision*, 19 J. LEGAL ED. 253, 271 (1967).

42. Grubb & Booth, *The Church and International Relations*, 17 YEARBOOK OF WORLD AFFAIRS 219 (1963).

constitutive decision.⁴³ A more striking phenomenon, one which attests to the increasing complexity and resource investment required for effective intelligence operations, is to be found in the contemporary intelligence corporation: private corporations that specialize in obtaining, processing and marketing intelligence, not only for policy makers in the market, but in the political arena as well.⁴⁴

A traditional channel for the performance of intelligence operations has been the universities. The recent revelations, in the United States, of government contracted research in a variety of different disciplines and the degree of interchangeability of university and governmental personnel, have tended to obscure the persistent fact that effective processes have always turned to the skill pools of universities for intelligence purposes. This natural search for the best talent has been abetted, since the Renaissance, by the individual scholar's desire to be "relevant," to participate in projects the results of which are quickly adaptable and discernible in social process. To the extent that government becomes aware of the utility of natural and social science procedures and skills in social control, and scholars become anxious about their "relevance," the incorporation of the universities within the governmental structure will be accelerated.

The traditional literature of international law has characterized the Roman Catholic Church as *sui generis*, because it manifests state, political order and political party characteristics in different contexts and at different points in time. In its intelligence gathering activities the Church employs the strategies customary for each of these participant types. Where diplomatic representatives of the Vatican are accredited, it maintains legations which perform intelligence activities through the normal diplomatic processes. At the same time, the international hierarchical structure, from parishes throughout the world to the seat of Peter's throne in Rome, serves as an enormous cell system through which a stream of intelligence is gathered and processed. It is not necessary to assume that the information deals with specific persons or particular acts. The significant point is that aggregate changes in perspective and behavior are immediately indicated by the experiences of churchmen at every level of society. The Church has also utilized the apparatus of special missions for intelligence gathering purposes.

43. See generally, J. COHEN & M. MINTZ, *AMERICA INCORPORATED: WHO OWNS AND OPERATES THE UNITED STATES* (1971).

44. B. SMITH, *THE RAND CORPORATION: CASE STUDY OF A NON-PROFIT ADVISORY CORPORATION* (1966); see also, D. PRICE, *GOVERNMENT AND SCIENCE: THEIR DYNAMIC RELATIONSHIP IN AMERICAN DEMOCRACY* 65 (1954).

6. *Individuals*

In a community which recognizes knowledge as a crucial scope and base value, an increasing number of individuals will tend to perceive themselves as participants in the shaping and sharing of intelligence.

As the pattern of science-based technology moves toward universality, traditional careers are abandoned for careers generated by the new knowledge.⁴⁵ Whether the new skills are specialized to the physical, biological or cultural realm, they reach out for more base values with which to reward and extend their activities. Hence they generate "policy scientists" who mediate between a specific group or organization of specialists and the larger social environment. Beginning as educational, scientific or journalistic managers or administrators, policy scientists become more actively involved in the policy processes of every sector of society. This includes the power process at every level; hence, it includes constitutive operations. Given their origin in one of the knowledge specialties, it is not surprising to find that careers include participation in the intelligence services, overt and covert, of transnational as well as national bodies. Scientific reputations establish the individual in innumerable instances as a reliable source of information about the past or of critical estimates of the future. Transnational audiences are prepared to give respectful attention to his testimony and to recommend to others that he be accorded full credence. Hence transnationally known figures are able to emphasize the dangers of a world system unable to safeguard general security and the probable gains of a more adequate system. They can often do this in ways that stress their spheres of competence and thereby reduce the likelihood that they will be dismissed as "mere propagandists."

B. *Perspectives*

The crucial considerations here concern the trends in *demands* for intelligence pertinent to common rather than special interests, *identifications* facilitating or impeding the production and sharing of intelligence for common rather than special use, and *expectation* patterns which facilitate the exploitation of intelligence for common purposes. Trends in these phases represent the skewered curves which are encountered throughout the world constitutive process and which indicate the simultaneity of trends that move toward and also away from a world public order of human dignity.

45. For the most comprehensive survey, see F. MACHLUP, *supra* note 10, at 377-400.

1. *Demands*

There is a marked increase in the demands for expansion of a world intelligence pool which can be used for common rather than special interests. Thus the global development process emphasizes the transfer and creation of technological intelligence centers in all communities of the world. The so-called "brain drain," the centrifugal process in which established intelligence centers tend to draw talented personnel from peripheral areas and thus to increase their capacities at the expense of the peripheries, is deprecated but not stemmed. It is significant that where intelligence centers are concentrated in highly developed technological communities, these communities regularly insist that their production of knowledge is an endeavor in the common interest and that knowledge, by its nature, is an inclusive human property benefiting all mankind.

The growing demand in many quarters for the shaping and sharing of intelligence on a global scale is in part nullified by other demands that are generated in a divided and hostile world arena. It may be, as is often said, that "science knows no borders." But scientists do; and so do those who seek to employ their knowledge for national security or for the exclusive benefit of a monopoly. Many branches of knowledge require heavy capital investment; and this typically comes, not from the scientist, but from others who have other ends than enlightenment in mind.

2. *Identifications*

A number of skill groups prominent in the production of intelligence are intensely identified with one another and with the fate of all mankind. Eminent scientists and scholars have undertaken to contribute to the common perception of man as a distinctive living form whose destiny is tied in with a common environment. It is increasingly regarded as inexcusably parochial for specialists of high talent and devotion to the general map of knowledge to prostitute their talents in the service of civil war within the species. However, it must be recognized that as matters stand today, identifications with less than inclusive units than all mankind continue with largely unabated vigor. In particular, identifications with the nation-state and with business entities operating nationally and internationally typically result in an

intelligence priority for these composite participants rather than for the whole of mankind.⁴⁶

Class identifications characteristically stand in the path of effective performance of the intelligence function. Where "intellectuals"—clearly delineated enlightenment and skill groups—are distrusted by other elite and rank-and-file members, elites may reject sophisticated conceptions of the intelligence operation. In the United States, for example, tension has frequently been generated between the intelligence and operational branches of departments, the latter presenting a demand for "facts" and showing impatience with any broader contextual considerations or with tentative judgments.⁴⁷

In the most fundamental sense, intelligence, as any other decision function, is an interpersonal activity and hence cannot proceed without some minimal capacity for identifications beyond the nuclear self.

The self-image of the intelligence operator is complicated and confused by the variety of activities properly included in the function. It is, hence, no wonder that the public image is heterogeneous and chaotic. At one end of the spectrum is the "spy" or the "informer" whose motivations vary from dedication to venality.⁴⁸ At the other end is the research director and expert witness who speak with the weight of authority and respected status. As the intelligence needs of the world constitutive process are clarified, the image of the operators will undoubtedly become more differentiated. In particular, places will be found for competent persons who are so cognizant of the map of the world social process as a whole that they come to conceive of themselves as servants of the common interest.

3. *Expectations*

The matter of fact assumptions about the interdependence of the world social process will presumably be affected by the actual interplay of individuals and organizations in every value-institution sector of the world community. It would, however, be a mistake to allege that since the "environment" is "objectively" interdependent, it will be so per-

46. Each of these identification patterns is, of course, supported by a network of external sanctions and internal, inculcated, autopunitive mechanisms. Espionage statutes and Official Secrets Acts, for example, support the prevailing state system and reinforce the parochial syndrome. There are other more subtle factors which continue to support this system of fractionated loyalty and hence restricted knowledge sharing. The very concept of "expert" in contemporary society imports membership in an exclusive group and concern for that group's unique base of power.

47. S. KENT, *supra* note 3; H. WILENSKY, *supra* note 1, at 8-16; H. RANSOM, *supra* note 18, at 6-7.

48. Some consideration of the complex role of the spy is found in R. WEST, *THE NEW MEANING OF TREASON* (1964).

ceived at any given moment or by any specific participant in world politics. The sequence between an event in the environment and the perception of that event as part of an interdependent world is no simple straight-line path. It depends on the readiness of the responder and his predispositions; and these predispositions include expectations about the consequences in terms of value indulgence or deprivation for adopting a comprehensive viewpoint.

The network of expectation patterns which affects the intelligence operation is particularly complex, for intelligence is an activity in which the individual psyche is the primary mediator. As a result, in crisis circumstances, a variety of basic psychopathologies become extremely significant factors on individual behavior and, derivatively, on the constitutive intelligence function. The most obvious example is, of course, latent paranoid tendencies which are intensified by crisis. Collaborative intelligence activities become more difficult and internal processes undergo stress. Fantasies emphasize short-range, rather than mid- and long-range intelligence needs; and the entire expectation and demand structure of the personality is reframed in an extreme dichotomization of political good versus evil. Even in periods in which the general population does not perceive itself in major crisis, individual crisis-ridden personalities often gravitate toward public or civil intelligence activities and shape them to configure their own psychopathological needs.⁴⁹

We have underscored the distorting effect of a world arena structured in hostile groupings. Individuals are rewarded who emphasize suspicion and distrust, quite apart from any personal pathology. The expectation of violence is the key factor in perpetuating the fundamental structure of a world divided against itself.

C. Situations

Every situation in the world social process may become significant for the intelligence process. Hence a comprehensive focus must go beyond specialized structures and consider unspecialized but functional intelligence arenas. It is convenient to deal first with intelligence sequences: gathering, processing and disseminating. We then single out

49. E. SHILS, *supra* note 15, at 77-104. The following essays in *THE RADICAL RIGHT* (D. Bell ed. 1963) are also useful: Westin, *The John Birch Society*, *id.* at 239; Lipset, *The Sources of the "Radical Right"*, *id.* at 307; Lipset, *Three Decades of the Radical Right: Coughlinites, McCarthyites and Birchers*, *id.* at 373. The tendency to equate obsessive secrecy with the so-called "right-wing" obscures the fact that this is a political pathology much more closely concerned with authoritarianism than with specific value preferences: *see generally*, T. ADORNO, *THE AUTHORITARIAN PERSONALITY* 840-42 (1950); F. ALEXANDER, *OUR AGE OF UNREASON* 221-27 (rev. ed. 1951).

the temporal and some other dimensions of intelligence for special attention.

1. *Component Arenas*

a. *Gathering*

There are certain relatively clear customary constitutive prescriptions that refer to access and to the lawful level of intelligence gathering activities.

Since Grotius, unequivocal international doctrine has held that the great sharable resources of the world are open to access by all peoples in pursuit of lawful activities.⁵⁰ Hence intelligence gathering on the high seas by instrumentalities which do not interfere with other lawful uses of the oceans are deemed lawful insofar as they do not precipitate noxious effects upon other users of the seas or upon protected features of the public order of littoral states. A number of states maintain fleets of intelligence ships, and it is noteworthy that protests and action against them have sought justification in claims of penetration of the territorial sea or allegations of self-defense, but not in terms of the generic unlawfulness of intelligence activities on the high seas.⁵¹ On the other hand, intelligence gathering by modalities creating disturbance of normal lawful user are deemed delictual. This conclusion derives, it may be cautioned, from the interference with normal lawful user and not from the fact that the activity in question is intelligence gathering. Thus, the erection of a permanent tower for intelligence purposes in a customary sea lane would transform a lawful act into a delictual deprivation of others' use of the high seas.

Comparable policies apply to the airspace above the oceans. While such factors as velocity and traffic load affect the public order regulation of airspace superjacent to the high seas, the normative regime for use of the airspace for intelligence gathering is the same as that governing the seas themselves.⁵²

50. M. McDougal & W. Burke, *THE PUBLIC ORDER OF THE OCEANS* 747-51 (1962).

51. *But see* Butler, *The Pueblo Crisis: Some Critical Reflections*, 63 PROCEEDINGS OF THE AMER. SOC'Y OF INT'L L. 7 (1969), who conjectures that the North Koreans made such a claim by implication in the Pueblo case.

52. *See* Stone, *Legal Problems of Espionage in Conditions of Modern Conflict* in *ESSAYS ON ESPIONAGE AND INTERNATIONAL LAW* 29 (R. Stanger ed. 1962). *But see* Falk, *Space Espionage and World Order: A Consideration of the Samos-Midas Program*, *id.* at 45. *See also* P. QUIGG, OPEN SKIES AND OPEN SPACE, LEGAL PROBLEMS OF SPACE EXPLORATION, SENATE COMM. ON ASTRONAUTICAL AND SPACE SCIENCES, S. DOC. NO. 26, 87th Cong., 1st Sess. 463 (1961); Gal, *Some Legal Aspects of the Uses of Reconnaissance Satellites* in PROCEEDINGS OF THE FIFTH COLLOQUIUM ON THE LAW OF OUTER SPACE, INTERNATIONAL INSTITUTE OF SPACE LAW OF THE INTERNATIONAL ASTRONAUTICAL FEDERATION (A. Haley ed. 1963);

In regard to space superjacent to the territory of nation-states, different factors come into play. The notion of territorial sovereignty *ad coelum et ad inferos* has not been extended effectively beyond the stratosphere. In part because of an inability to control surveillance craft above a certain level, in part because of a shared perception of common security needs, the lower reaches of outer space have been assimilated, in regard to intelligence gathering, to the regime of the high seas. Insofar as intelligence activities do not extend beyond passive monitoring, they are considered a lawful use of an inclusive shared resource. On the other hand, the sub-stratosphere superjacent to nation-state territory is considered assimilated to its exclusive territorial jurisdiction. It is not a shared resource and is not therefore subject to the unqualified intelligence gathering activities of the high seas and the lower reaches of space.

The international law of intelligence gathering within the territorial confines of a nation-state remains a controversial subject. The more traditional doctrinal view has been that intelligence gathering within the territorial confines of other states constitutes an unlawful intervention, under both customary and conventional international law.⁵³ In terms of the actual volume of this activity, however, the number of formal protests which have been lodged have been relatively insignificant. This latter practice suggests a somewhat ambivalent perspective upon the part of national elites in regard to such activities and may indicate a deep but reluctant admission of the lawfulness of such intelligence gathering, when conducted within customary normative limits.

Intelligence gathering within a nation-state by aliens is characterized nationally as the crime of espionage and is subject to national criminal prescription and application. Despite the fact that every nation-state prosecutes espionage, no systematic attempt has been made to assimilate the activity to *delicta juris gentium*.⁵⁴ The anomaly of such an attempted assimilation would lie in the fact that all states which

Gabrovski, *Reflections on the Juridical Problems of the Extra-Aeronautical Space and the Reconnaissance Satellites*, *id.* On the extraordinary technical capacity of such reconnaissance techniques, see Klass, *Keeping the Nuclear Peace: Spies in the Sky*, N.Y. Times, Sept. 3, 1972, at 7 (Magazine); Greenwood, *Reconnaissance and Arms Control*, 228 SCIENTIFIC AMERICAN 14 (Feb. 1973).

53. See, e.g., Wright, *Espionage and the Doctrine of Non-Intervention in Internal Affairs* in *ESSAYS ON ESPIONAGE AND INTERNATIONAL LAW* 3 (R. Stanger ed. 1962); the peculiar limbo to which traditional international law consigned espionage is well reflected in an early edition of Oppenheim: see 1 OPPENHEIM, INTERNATIONAL LAW § 455 (3d ed. 1920).

54. The authoritative myth about the "lawfulness" of espionage and the lawful subjection of apprehended spies to the death penalty contains a high measure of sophistry. See M. McDUGAL & F. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* 559-60 (1961).

condemn espionage engage in intelligence gathering and many of their own activities abroad could be characterized as espionage under their own statutes. A further difficulty lies in the fact that the line between lawful intelligence gathering and espionage is thin, and may, in fact, ultimately be irreparably perforated by technological innovations. The greater part of intelligence gathering consists of simply monitoring and collating public statements made within a foreign state, in national and regional newspapers, trade, professional and technical journals, government department announcements, and so on.⁵⁵ Collection from these sources involves gathering activities whose situs of operation is difficult to locate. A communication, it should be remembered, is not a discrete event, but is part of a network of communicational patterns. With the advent of the modern technology of communications, the entire world community comprises one vast audience. In a technical sense, then, to communicate with any one determinate point of the globe is often to communicate with all.

In the light of these considerations, the problem of delimiting spheres and extents of lawful intelligence gathering within the territorial confines of nation-states becomes somewhat more manageable. The gathering of intelligence within the territorial confines of another state is not, in and of itself, contrary to international law unless it contravenes policies of the world constitutive process affording support to protected features of internal public order. Activities which seriously compromise the dignity of individual citizens, their privacy or personal security, or involve the destruction of property are, of course, unlawful no matter which decision function they attend. Such activities are, however, still widespread adjuncts of intelligence gathering.

b. *Processing*

The advent of a technological civilization that relies increasingly on credit and check rather than cash in the economy means that an enormous amount of intelligence is produced in the course of ordinary commercial transactions rather than as an intelligence operation per se. Insofar as a monetary criterion is accepted as a valuation of events and an indicator of more general perspectives and operations, the aggregate technological memory of a society will increasingly retain, in a semi-processed form, a clear recall of the prodigious range of acts performed by specific individuals, as well as a record of a collective valuation of its worth. A harbinger of this trend is already visible in the intelligence gathering of national credit associations, whose activi-

55. See, e.g., S. KENT, *supra* note 3, at xviii-xix. For a different view, see A. ORLOV, *supra* note 34, at 5, 12 (1963); P. LEVERKUEHN, *supra* note 33, at 202.

ties have been enormously facilitated by the cybernetic processing and, in particular, storage techniques of a variety of other industries.⁵⁶ And a sound credit evaluation, it should be recalled, is not a purely fiscal operation but rather a relatively contextual assessment of the subject's "character" as well as of his "capital" and "[repayment] capacity."

As transnational activities increase and institutionalize, the attention focus of technological memory banks may be expected first to become national and ultimately to approach universality. At least initially, these trends will involve intense centralization and generate comparable power consequences. At later stages a communication grid that includes competent representatives of all significant territorial and pluralistic groups may share processed intelligence widely.

In such a projection, intelligence gathering will tend to be assimilated to intelligence processing. Prescriptions aimed at realizing such policies as privacy and personal inviolability, which have been heretofore primarily directed to data gathering, may not be shifted promptly to regulate the processing sequence; hence, a significant intrusion into the zone of privacy may result. If, as has so often been suggested, privacy is not only a pillar of our preferred public order, but is also a key condition of cultural creativity, the consequences of lagging adjustment can be the infliction of irreparable damage to civic and public order. Unless special techniques of supervision are innovated, it is probable that such fundamental doctrines as the right of privacy will be eroded.

c. Dissemination

The conception that the dignity of every human individual includes a right to participate in all value processes finds repeated expression in contemporary international law. Such participation ultimately depends upon relatively unrestricted access to pertinent intelligence by all who seek it. In practice, however, these policies may conflict with other equally relevant community goals. Under certain circumstances, group security may depend on secrecy. Although this claim has been frequently exaggerated by crisis ridden or self-serving personalities,⁵⁷ its soundness cannot be denied. At the other extreme, it is evident that the unrestricted dissemination of intelligence may precipitate serious

56. See, e.g., C. ELLIOTT & R. WASLEY, *supra* note 10; Salm, *Automatic Methods of Information Storage and Retrieval* in R. GREENE, *supra* note 10; F. MACHLUP, *supra* note 10, at 295-322.

57. See E. SHILS, *supra* note 15, at 77-104; H. LASSWELL, *POWER AND PERSONALITY* 39 (1948); Wolfenstein, *Some Psychological Aspects of Crisis Leaders* in *POLITICAL LEADERSHIP IN INDUSTRIALIZED SOCIETIES: STUDIES IN COMPARATIVE ANALYSIS* 155 (L. Edinger ed. 1967).

deprivations in other realms of public order. Much intelligence inevitably touches upon the private lives and pursuits of individuals and its dissemination is bound to have at least some adverse effects. Hence, the most appropriate constitutive policy in regard to the dissemination of personal information is that such findings receive no publicity unless a substantial common interest will probably be served thereby.

Constitutive policies are as much concerned with the affirmative as the negative problems of dissemination. We are aware of the importance for our preferred world order of relatively unrestricted access to pertinent, reliable and publicized intelligence under the control of intelligence agencies. There are, however, no constitutive prescriptions that expressly assure such dissemination. The United Nations cannot, for example, compel a member-state to publicize, within its jurisdiction, intelligence findings which the UN might wish brought to public attention within a given polity. Nor is the organization equipped to monitor and appraise sub-disseminations by national elites of intelligence which the UN releases for public consumption.⁵⁸ This can be a serious hindrance to world order, since national elites will frequently decide that their interests are maximized by distortion or total suppression of intelligence incompatible with their particular objectives. This situation is, of course, remedial. There is no major technical obstacle in the creation of a United Nations Broadcasting Network, exploiting the rich translation services already extant within the organization, and reaching an inclusive global audience by means of satellite transmission. Presumably, national elites will be hesitant about such a creation.

A factual situation of great importance is the "leakage" of communications across state lines. Radio communications across state boundaries are a frequent and relatively inescapable product of normal infra-state transmission. Although the ITU has sought to allocate the limited quantity of bands and wave lengths among adjacent states, radio interpenetration frequently occurs in fact, and in many states is a prime source of intelligence for the populace. Moreover, on numerous occasions, nation-states create special foreign transmission services to serve channels for their version of intelligence: the United States, the United Kingdom, France, the U.S.S.R., China, the United Arab Republic and Cuba all use radio as a key instrument of ideological communication.⁵⁹

In the aggregate, these activities serve to unify a global dissemination arena and hence to increase the quantity and quality of intelligence

58. See A. SZALAI & M. CROKE, *supra* note 23.

59. For range of activities, see W. DAVISON, *supra* note 4; L. MARTIN, *supra* note 4; J. WHITTON & A. LARSON, *PROPAGANDA* (1963).

provided to rank-and-file consumers. Their lawfulness under prevailing international prescriptions is, however, controversial. Because disseminated intelligence has an important power potential, particularly when it by-passes the ruling elite and reaches the public-at-large, it has been assimilated to propaganda by a number of claimants who have affirmed the authority of constitutive prescriptions that characterize the activity as unlawful intervention in the domestic affairs of a state.⁶⁰ The Organization of American States, for example, has adopted an extreme position on radio intervention.⁶¹ It is also memorable that the interests threatened by an unrestricted dissemination of intelligence to all peoples everywhere were instrumental in frustrating the United Nations' efforts to establish freedom of information as an unequivocal international policy.⁶² From the perspective of the policies which we have projected for a world public order of human dignity, all claims to lock nation-states out of a grid of free international communications must be deprecated as a special elite interest that is incompatible with the inclusive common interest.

Elite attempts to restrict the dissemination of intelligence which they have not processed to their own ends may be expected to continue as long as elites persist in viewing their power interests exclusively in terms of national components. Nevertheless the attempt to restrict dissemination will ultimately be frustrated by an advancing technology of communications. The convergence of satellite transnational broadcasting and the dissemination of cheap and small transistor receiving sets seem to assure the ultimate establishment of a globally inclusive arena for constitutive intelligence. As this trend becomes more apparent, elites can be expected to resort to alternative methods of frustrating the potential of free intelligence: acculturation, mind control and political control of the content of communication.

2. *Time Dimensions*

In popular parlance, intelligence is conceived of as a quick operation, whose effectiveness depends upon the rapidity with which secrets are ferretted out, processed and disseminated to elite decision-makers. There are, of course, circumstances in which the speed with which the intelligence sequences are executed is a vital component of the decisional utility of the information gathered. It is, however, im-

60. See, e.g., G.A. Res. 2916 (xxvii) Nov. 9, 1972, and also Report of Comm. I, U.N. Doc. A/8864, A/L. 6821.

61. See CHARTER OF THE ORGANIZATION OF AMERICAN STATES arts. 15, 16, but cf. Art. 3, 147 L.N.T.S. 69.

62. See L. MARTIN, *supra* note 4.

portant to emphasize the temporal range of different intelligence projects. In a world characterized by rapid change, whose minimum goal may ultimately be the regulation of the tempo of change so as to maintain a stable social fabric, the importance of projective intelligence is enormously augmented. The "Five-Year Plan" for social and economic development, with an implied, if not implemented projective intelligence operation of commensurate duration, is now neither surprising nor exciting. We are growing accustomed to a plethora of multidisciplinary 30 year projections, and it is increasingly apparent that the maintenance of a livable environment will require even more ambitious future thinking. We may expect projective intelligence for 100 year periods and, ultimately, intelligence versions of the future which are based less on forecasting conceptions and more on evaluating and following preferred policies and procedures for the reshaping of man and his environment.

It is unfortunate that thus far projective operations have been undertaken rather infrequently by official power agencies, despite their vast resources and stable structures. To a disproportionate degree projective thinking has been the preserve of private scholarship and commercial research. Effective intelligence and effective decision-making will obviously require major changes in official thinking, and in particular a new incentive system within the bureaucracies of government. A recent study confirms that

the orientation in the intelligence services is overwhelmingly toward short-term estimates of future conditions and to developing the professional skills for this kind of work. . . . In the Foreign Service and the State Department, the overwhelming pull is in the direction of attending to immediate problems, and taking the longer-run view is hardly encouraged. Even when a structure is created to supplement this strong preoccupation with the problems of the day—for example, the Policy Planning Council—the tendency of its members is to immerse themselves in the dominating problems of the present. This is where the rewards beckon, while the products of long-range analysis are likely to be consigned to dusty shelves.⁶³

The described perspectives are obviously self-defeating if the necessary projective intelligence operations are to be provided for.

The increase in the temporal span of projective intelligence operations has been matched by a decrease in the time period during which many activities are executed. The use of technology and cybernetics have fractioned the time and manpower needs in much intelligence work.

63. K. KNORR & O. MORGENSTERN, *POLITICAL CONJECTURE IN MILITARY PLANNING* 44-45 (1968).

The factors which condition temporal span and time perception in intelligence activities, and more broadly, in the framing of intelligence goals are deeply imbedded in personality and society. At a deep level, basic cognitive conceptions of time and metaphysical notions of causality of a given culture are pervasive influences on the temporal ambitions of intelligence activities. A cultural system which entertains a linear conception of time, for example, will presumably produce more sanguine intelligence participants than are generated by a culture with a cyclical notion of time. Similarly, a culture viewing man as a prime mover and *causa causans* will turn more routinely to intelligence activities than a culture with a cosmology in which man is a secondary actor. Perspectives about time and causality are also affected by socio-structural factors within society. Speier, for example, suggests that political elites who have derived, or perceive themselves as having derived, from a persecuted group may be expected to plan further in advance than groups with no personal history of counter-elite conflict.⁶⁴ He also hypothesizes that political class elites incline to more planning than do vertically mobile or democratic elites. Wilensky suggests that the critical factor in the duration of forward-intelligence planning is the elite's perception of incumbency. "The frequent, routine succession of leaders in stable democracies, while encouraging continuity of past policy, may discourage long-range plans."⁶⁵ Aristocratic or political class groups, on the other hand, will exercise a greater penchant for forward-intelligence and planning. While Wilensky's hypothesis may fit certain levels of official elite activity, it does not cover the broader range of intelligence activities which proceed independently of official power processes. Knorr and Morgenstern, for example, cite bureaucratic incentives as a factor affecting temporal perspectives within official intelligence agencies.⁶⁶

3. Structural Features

The effect of institutionalized structural patterns on human activity is a critical factor in performance level. Some attention has been directed to the problem of structural "pathologies" in information collection. Drawing on a broad literature and wide empirical investigation, Wilensky isolates a number of organizational factors inducing the failure of an intelligence sequence.⁶⁷ An excessively hierarchical organization in which rank is multiplied, delineated in detail and sub-

64. H. SPEIER, *SOCIAL ORDER AND THE RISKS OF WAR* 448 (1952).

65. H. WILENSKY, *supra* note 1, at 121.

66. K. KNORR & O. MORGENSTERN, *supra* note 63, at 43.

67. H. WILENSKY, *supra* note 1, at 173-91.

jected to the ascription of intense symbolic differences, tends to block upward communication, to create horizontal loyalties retarding the vertical sharing of information and to set recruitment and advancement standards in terms of organizational compatibility rather than talent. An organizational structure which induces specialization and inter-departmental rivalry tends to parochialize intelligence foci and to render intelligence a base of power for departmental maneuvering as well as an output for the servicing of elite decisionmakers. When competition becomes more intense, departments become reluctant to share information and may produce irrelevant or misleading information.

Bureaucratic growth introduces other structural factors. As the component units of an organization proliferate, the communicational distance between intelligence functionaries and key policy makers increases. As the spatial scope of the intelligence operation expands, geographical allocations of responsibility impede appropriate functional attention areas, for many problems which are defined as geographical are, in fact, transnational value problems. On the other hand, centralization of intelligence activities deprives the operation of the necessary fleshing-out in the inclusion of local field work. A broad gap between the intelligence center and field gathering and appraisal can induce intelligence fantasies, which barely approximate the actual conditions that prevail.⁶⁸

A number of detailed case studies of intelligence pathologies are available, and these provide vivid demonstration of the fact that a structural problem may result in total frustration of otherwise sound intelligence. Thus, the attack on Pearl Harbor was anticipated by field intelligence gatherers and skilled, but hierarchically low, intelligence processors. Yet the absence of appropriate channels prevented this intelligence from piercing the thick layers of bureaucratic dermis in time to avoid or diminish the disaster.⁶⁹ It is now reported that three opportunities for a negotiated Vietnam Peace from 1964 on were still-born because indirect communications from the government of North Vietnam to the mid-elite of the United States Government were, for as yet inexplicable reasons, not transferred, in turn, to President Johnson.⁷⁰ In the Bay of Pigs debacle, interdepartment and infra-departmental rivalry induced a reluctance to share information; inadequate channels between field and center generated intelligence fantasies at the

68. *Id.* at 175.

69. R. WOHLSTETTER, *PEARL HARBOR—WARNING AND DECISION* (1962).

70. Cousins, *How the U.S. Spurned Three Chances for Peace in Vietnam*, LOOK, July 29, 1969, at 45.

policy apex.⁷¹ There is, of course, no perfect structure for intelligence operations, but the Bay of Pigs and Pearl Harbor cases do indicate that the more serious pathologies are remediable.

Since the aggregate world constitutive intelligence arena is neither homogenous nor unified, broad general characterizations of structural strengths and weaknesses cannot be drawn. Diverse component intelligence arenas display different strengths and weaknesses.

4. *Crisis*

During intercrisis periods in world affairs a variety of unquestionably lawful public order activities produce, as ancillary consequences, intelligence about the behavior and plans of others. Even when missions and legations operate under severe self-restraints they cannot avoid acquiring rather precise factual data and assumptions about the perspectives of their hosts. Diplomacy is a lawful instrument of national policy and, as we have seen, one objective of diplomacy is the sharing of intelligence. Sonar and radar navigational techniques used by ships and planes cannot but produce intelligence data about other participants, even though their primary objective is navigational safety. Orderly movement and inclusive safety require that a variety of activities in the shared resource environment be preceded by publication of rather detailed plans and intentions. The movement of warships through certain straits, for example, or through an interoceanic canal must be preplanned and prepublicized. Such activities necessarily produce intelligence. The daily transnational movement of peoples for business, social and tourist purposes yields a wealth of data about the activities and plans of other nations. All of these primary activities are lawful, yet they may produce as much intelligence as the specialized national agencies.

The intelligence consequences of many of these ordinary activities are normally tolerated as part of interstate exchange. Insofar as they do successfully provide participants with realistic images of each other, they act in some degree as a stabilizing influence. In periods of crisis and intense distrust, however, intelligence is raised to a new power premium. Many of these normal activities are restricted precisely because of their ancillary intelligence aspects.

The psychological effects of crisis become relevant. The most recurrent response is a shift to intensive primary identifications with corresponding increase of xenophobia and particular hostility to individuals associated with the adversary group. Concurrent with the

71. A. SCHLESINGER, *A THOUSAND DAYS* 233-66 (1965); T. SORENSEN, *KENNEDY* 294-309 (1965); H. WILENSKY, *supra* note 1, at 76-81.

obsessive inclination to husband and concentrate one's own resources for security purposes is an increasing difficulty in participating in collaborative activities with the adversary. Hence prior patterns in intelligence sharing which had formerly been assumed to be matters of common interest are attenuated or terminated completely. The activation of a crime of espionage is only one facet of such crisis response and, in terms of aggregate social effects, may be relatively insignificant. More important are the introduction of political boundaries to the dispersal of scientific and technical knowledge and coercive or persuasive restraints on the free exchange of fact and opinion within a particular state. Restraints such as these, which may shade off into a subliminal level of individual consciousness, can engender highly durable changes on the global constitutive level as well as on the municipal public order level.

Such crisis response is not necessarily irrational. Some participants may indeed experience a short-run gain by depriving others of intelligence data in their possession and by attenuating the regular exchange of goods and services. In an arena in which violence is commonly assumed to be the *ultima ratio*, the psychological changes engendered by mobilizing a crisis response may be necessary preliminaries to the development of the emotional capacity to apply violence to other human beings. Hence official propaganda may accelerate or even initiate the process to this end. In a very real sense, the disclosure of certain facts—the nature, capacity and location of defense installations, for example—can seriously shift the power relations between two antagonistic participants.

In the perspective of the common interests of the world community, the rational core of crisis response must be balanced against its predictably dysfunctional effects. The short-run value gain from termination or attenuation of intelligence and commodity exchange will conclude in a net loss for all participants. Even if it is not scientifically demonstrable that the unrestricted exchange of values is a precondition of their greatest net production, it is empirically verifiable that participants, activated by the desire to maximize their overall value positions, will, under normal circumstances, engage in multivalued exchange. The fact that in genuine crisis situations individuals may be forced to employ violence and that crisis response functions as a form of psychological adrenalization should be balanced against the obvious fact that crisis response will also increase the probability of escalating violence; and it will, furthermore, decrease the capacity of elite and rank-and-file members to investigate alternatives or even to think in terms of compromising or integrative solutions. Thus, it need hardly be added that

in a free or open society, sustained crisis will erode the very essence of freedom: in struggling for survival, free society moves toward the garrison state.

The ultimate test of the degree of rationality of any aspect of crisis response is the extent to which, in the given context, it contributes to the genuine interests of the participants involved. The self-perceived interests of individual participants must, of course, be distinguished from genuine common interests as identified and appraised by an objective observer. Personal crises, such as tension between two naval officers of different powers, may be perceived as globally significant. It is worth emphasizing that a crisis need not be inclusive, global and deprivatory for all participants. Some participants may view an imminent, violent shift of value-control as promising immediate rewards; hence, they deliberately pursue crisis diplomacy. We do not forget that value pursuits may carry psychopathological overtones. An individual may unconsciously court self-destruction or a local politician may seek to consolidate his municipal power by creating and sustaining a transnational crisis. Moreover, participants who are genuinely concerned to alleviate crises may fail to achieve an appropriate perspective and may, through miscalculation, defeat their actual interest in crisis abatement.

D. *Bases of Power*

1. *The Role of Authority*

The authority of community expectation is a potent asset in reference to intelligence, as to every exercise of power. As matters stand today the scope of authority available to the various participants in the transnational political process remains vague. The critical point is the borderland between claims to inclusive and to exclusive authority. Because inclusive intelligence gathering is a necessary technique for the maintenance of international standards in every sector which affects international life, it would appear reasonable to affirm that the balance should weigh in favor of an inclusive constitutive intelligence gathering competence.

Available case studies indicate that the trend in authority has moved clearly in this direction. There is no instance in which a claim of domestic jurisdiction has deterred the UN General Assembly from demanding and gathering the intelligence available for investigation which it decided came within Article 10 of the Charter.⁷² The prin-

72. For an evaluation of these claims, see generally, R. HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* (1963).

ciple has been applied against great as well as small powers. Of equal significance is the distinction which the General Assembly has drawn between the gathering of intelligence on the one hand and the applicative phases of decision on the other. In the *Peace Treaties* cases,⁷³ for example, the International Court of Justice ruled that actual decision was not permissible, yet the General Assembly still condemned the defendant states for their "wilfull refusal" *inter alia* to submit relevant information about human rights matters subject to international supervision.⁷⁴ Trends in authority have not, unfortunately, been matched on the control level.

A number of trends indicate an inclusive demand to obtain maximum intelligence for decision-making, but these trends are countered by the coarchical division of power and loyalty in the global arena. An inclusive demand for the divulging of information for legitimate decision purposes is often contradicted by an exclusive demand to suppress the same information for asserted purposes of national security. These demands are not, it should be emphasized, incompatible, for clarified common interest can, in different contexts, either demand total revelation or sanction the suppression of relevant information if the appropriate policies are served.

The operational problem occurred in the *Corfu Channel* case.⁷⁵ An officer of the British Navy, under orders, refused to testify in regard to a document which the United Kingdom had classified, despite the fact that the document appeared to be crucial to establishing the intentions of the United Kingdom in the factual complex under adjudication. The Court ultimately ruled that the necessary facts could be established without reference to the document in question and may, indirectly, have conceded the tenability of the United Kingdom's security claim.⁷⁶

The most extensive inclusive demand for intelligence is found in the "Rule in Parker's case."⁷⁷ Here an arbitral tribunal asserted as a prerogative of inclusive decision the complete disclosure of all information which might bear upon the case at bar. The Statute and the Rules of the International Court of Justice set a somewhat lower standard and, as the *Corfu* precedent indicates, the Court is predisposed to consider a claim of lawful suppression. But it is significant that the Statute does afford the Court a number of sanctions which may be im-

73. Interpretation of Peace Treaties with Bulgaria, Hungary and Roumania [1950] I.C.J. 65, 221.

74. G.A. Res. 1485 (V), Nov. 3, 1950.

75. *Corfu Channel Case (Merits)* [1949] I.C.J. 4.

76. Cf. D. SANDIFER, EVIDENCE BEFORE INTERNATIONAL TRIBUNALS 84 (1939).

77. Parker Claim, Opinions (United States v. Mexico), General Claims Commission 39-40 (1927).

posed upon a party unlawfully suppressing intelligence relevant to decision. The efficacy of these sanctions will depend, of course, on the disposition of control in the specific arena in which they are applied.⁷⁸

The authority of international organizations for intelligence gathering varies widely. In a number of areas, the Charter of the United Nations imposes a mandatory demand upon member-states to collaborate in certain activities with the organization. States with trust jurisdiction, for example, are obliged to submit annual reports to the Trusteeship Council and to participate in a variety of other intelligence gathering activities relevant to their administration of the Trust Territory.⁷⁹ The South West Africa case, in which the General Assembly ultimately terminated a mandate, originally granted by the League of Nations, for persistent violations of the substance and procedures of the Mandate,⁸⁰ indicates that Mandates or trusts are conditional grants of international authority, whose continuing validity depends upon conformity to the standards set by the inclusive community. A breach of such standards, *inter alia*, failure to conform to obligations in regard to the crucial intelligence function, is vulnerable to severe sanction. The South West Africa case,⁸¹ as yet only a seminal indicator of a new trend, also points up the limited effectiveness of such inclusive sanctions. The Republic of South Africa has not yet surrendered its control over South West Africa. On the other hand, the repudiation of the United Nations decision has undoubtedly increased the South African government's problems of administering the territory and has further isolated it from the international community.

Another example of an inclusive authority to compel the sharing of intelligence is found in the Economic and Social Council's Commission on Human Rights.⁸² The already ambiguous authority of the Commission as stated in the Charter and in its own Statute was further obscured by the Commission's self-denying ordinance of 1947.⁸³ The more recent practice, however, indicates a steady retreat from the 1947 ruling and an increasing tolerance upon the part of the United Nations to accept more compulsory intelligence gathering authority in certain

78. W. REISMAN, *supra* note 24, at ch. 11.

79. See, e.g., the Trusteeship Agreement for the Territory of Somaliland, 118 U.N.T.S. 255 art. 5(1); U.N. Charter arts. 79, 87.

80. G.A. Res. 2145 XXI, 28 October, 1966, confirmed in [1971] I.C.J. 16.

81. South West Africa Cases (Second Phase) [1966] I.C.J. 4.

82. See U.N. CHARTER art. 68. For reference to the rise and fall of the auto-limitation of this article, see note 83 *infra*.

83. Report of the 1st Session of the Commission on Human Rights, U.N. Doc. E/259 paras. 21-23; Economic and Social Council Res. 75 (V).

areas of human rights.⁸⁴ The inchoate authority of the UN to gather intelligence about human rights is, of course, coextensive with its security powers, for in the Charter conception human rights and international security are integral.⁸⁵

The authority of the General Assembly to collect intelligence is coextensive with the major purposes of the Charter. Article 10 of the Charter authorizes the Assembly to "discuss any questions or any matters within the scope of the present Charter." Such discussion necessarily involves the introduction of intelligence relevant to the matter under consideration. Indeed, one indirect function of the Assembly's activity has been the formation of attention foci for vast segments of the international elite and public.

The intelligence gathering competence accorded the Security Council under the Charter exhibits a higher degree of compulsory authority, but it is more conditional than that allowed the General Assembly and considerably more restricted in scope. Article 34 of the Charter authorizes the Council to investigate "any dispute, or any situation which might lead to international friction or give rise to a dispute." The maximum powers of the Council come into operation when the Council formally finds the existence of a threat to or breach of the peace or an act of aggression. Operating under this form of action, the Council may demand the revelation of intelligence; under Article 25, members are obliged to surrender such intelligence in compliance with the Council directive. The dynamics of the Council provide a considerable sanction potential: the mere installation of a matter on the agenda obliges a state to adduce sufficient evidence to justify its removal.

In organized communities in which a high degree of authority for the gathering of intelligence has been accorded to inclusive authorities, the opposing interests in such activities are generally reflected in complementary normative sets. A domain of privacy, of varying content, is recognized and it may be breached in part only in conformity with lawful procedures.⁸⁶ Similarly, the recognition of a compulsory au-

84. Schwelb, *Some Aspects of the Measures of Implementation of the International Covenant on Economic, Social and Cultural Rights*, 1 LES DROIT DE L'HOMME 363 (1968). On May 27, 1970, the Economic and Social Council adopted a new procedure for dealing with communications from private persons and groups alleging violations of human rights and fundamental freedoms. Although the procedure is not unambiguous, it includes reception of such communications and, in appropriate circumstances, the initiation of inclusive investigation. For a brief description, see 7 UN MONTHLY CHRONICLE 47 (Number 6, June, 1970).

85. McDougal & Reisman, *Rhodesia and the United Nations: The Lawfulness of International Concern*, 62 A.J.I.L. 1, 5-13 (1968).

86. See H. GROSS, *PRIVACY—ITS LEGAL PROTECTION* (1964); A. HARRISON, *THE PROBLEM OF PRIVACY IN THE COMPUTER AGE* (1967) is an annotated bibliography providing a comprehensive survey of the literature. For European approaches, see

thority to collect intelligence will often be tempered by a complementary norm that forbids structuring processes in a manner that requires self-incrimination. The latter is considered by many to be among the bed-rock principles of human dignity. Many of the national doctrines reflecting the complementary aspect of international intelligence gathering are traditional norms which have become tightly interwoven with national myth and miranda. Hence they have manifested a striking immunity or at least resilience to critical investigation and appraisal. A consideration of the successive components of the intelligence function, for example, would indicate that the greatest concern is usually with dissemination, and that, assuming appropriate safeguards, an inclusive interest might be accommodated in gathering, processing and limited dissemination when genuinely inclusive community interests are furthered. Such an interest could be adapted to the equally legitimate demand to respect individual privacy and, ultimately, the integrality of the individual personality. Here, as in many other areas of public order inquiry, the failure to maintain a distinctive observational standpoint has bedevilled policy investigation.

Yet the persistence of the complementarity can be traced to a continuing antinomy of interests in any community which simultaneously emphasizes the development of the individual ego and the inculcation of a shared consciousness of group integrity and interest. This normative balance poses the question, in ever changing contexts, of how far, for what purpose and through what procedures the inclusive group may gather intelligence for its legitimate purposes and, in obverse, what claims the individual citizen may make for the protection of his privacy.

2. Distribution of Control

a. Power

Patterns of the allocation of effective power in the international arena continue to favor exclusive over inclusive structures. In particular contexts, the dynamics of the process may accord a functional power to an inclusive process for purposes of intelligence gathering, but general trends continue to indicate a reluctance on the part of national elites to share a significant part of their power with an inclusive organization for intelligence or for other decision functions.

The obvious application of power to intelligence operations is in coercive release of the information necessary to political decision. In

S. STRÖMHOLM, *RIGHT OF PRIVACY AND RIGHTS OF THE PERSONALITY* (1967). See also A. WESTIN, *PRIVACY AND FREEDOM* (1967).

the diverse social and power processes in the international arena, different elites in different situations may enjoy such functional power. The authoritative restraints operating on them will vary according to a number of different factors. The point to be emphasized is that power for intelligence gathering purposes is not the exclusive monopoly of national elites or their authorized representatives. On the contrary, national power is often most manacled with authoritative restraints. It is frequently on the lower levels of social organization that other value elites can command the release of intelligence by the exercise of threats of severe deprivations which they are quite capable of imposing.

The extent to which naked power will be tolerated for intelligence gathering purposes is determined to a large extent by the values of the public order system involved, whether we are dealing with a territorial nation-state, a political party or order, or a gang. Public order systems which put a high premium on human dignity will presumably attenuate the range of situations in which high degrees of coercion will be used to secure the release of intelligence. The functional public order values of a gang, on the other hand, which cultivate violence as a creed in relation to others and as a *blutkitt* between gang members, will resort to violence for intelligence, as for other decision functions, more as a matter of ideology than of convenience. Gangs, whether operating infra or interterritorially, or in charge of the apparatus and symbols of a nation-state, illuminate a critical factor in the choice of base value and strategy for intelligence collection: a preference for high or low level coercive techniques may result from group ideology or personal psychic disorder rather than from objective choice of the most expedient strategy. The Nazis used violence rather than more sophisticated and economic pharmacological techniques for getting the truth because they were thugs, part of whose creed and motivation was sado-masochistic.⁸⁷

We have considered power as a base for the intelligence function within a rather narrow temporal span. In broader perspective, the sustained disposition of effective power has a much larger ramification for intelligence purposes, for it permits elites to create predispositions within the rank-and-file favoring the voluntary contribution of intelligence to specified elite targets and internalizing in each personality a value scale according to which the suppression of information is experienced as evil and triggers autopunitive measures. Within closely knit kinship groups, such sharing of intelligence is a common feature. A comparable impulse may be evolving within transnational skill groups where invocations of professional loyalty seem to elicit a desire to share

87. Alexander, *War Crimes and Their Motivation*, 39 J. CRIM. L. 298 (1948).

intelligence or, alternatively, to suffer feelings of guilt if information is suppressed from colleagues. This phenomenon will be considered more fully in our discussion of affection and loyalty as bases of power. The capacity of an elite to shape perspectives conducive to long-term intelligence exploitation is a function of power.

b. *Wealth*

The wealth available for intelligence has heretofore been primarily at the disposal of nation-states. The increasing costs of global intelligence suggest that the number of effective participants will be further winnowed until only superpowers can maintain plenary intelligence processes. This trend, itself, may accelerate intelligence collaboration through international governmental organizations and stimulate states to contribute segments of their intelligence budgets to inclusive organizations in return for intelligence dividends. Private intelligence corporations may become intelligence contractors, leasing their personnel and plant capacity to different participants for specific intelligence needs.⁸⁸ The seminal intelligence activities of the IAEA may be a harbinger of future inclusive intelligence activities stimulated in part by the limits of individual nation-state resources.

The capacity to mobilize wealth resources for intelligence purposes has been an increasingly important base in this decision function. For gathering sequences, wealth can be used to buy information or, in a more subtle form, to secure its release by implications of the withholding of future wealth or wealth-dependent indulgences. In those cultures in which wealth is accorded a high social premium, where "the wealthy" equal "the good", wealth elites may find themselves the recipients of information in a manner similar to religious contributions, libations and so on. The role of wealth in intelligence gathering may, however, be neutralized. For example, ideological loyalty, intense rectitude demands within the personality, or psychopathological states, may prove far stronger than the attractions of lucre. Yet it is significant that veteran intelligence gatherers prefer a paid to an ideologically motivated informer. The latter is believed to be less stable as a person and therefore more susceptible to change of conviction. Hence it is standard practice to put the informer who recruits himself on the payroll, his protestations notwithstanding.

The significance of wealth is less visible but of equal if not greater consequence in other aspects of intelligence gathering. The maintenance of a vast network of communications for the timely perception of rele-

88. See Price's theory of "federalism by contract" in D. PRICE, *supra* note 44, at 65.

vant data and its rapid transmission to a processing center requires an enormous continuing wealth investment. Since, in the view of many observers, the deduction and synthesizing operations performed on a mass of legitimately collected information are the more crucial parts of intelligence when compared with the glamorous theft of documents,⁸⁹ wealth plays an ever greater role than is ordinarily apparent.

The processing of intelligence has become an enormously technologized operation, requiring a vast and highly trained personnel force with large and expensive plant facilities.⁹⁰ As the volume of necessary information increases, as it must because the total focus of intelligence in the future will have to be more continuously global and comprehensive, greater reliance will perforce be placed on mechanical and cybernetic systems for synthesis, storage and retrieval. The investment necessary for the maintenance of such systems will grow proportionately. Presently we are witnessing only the beginning of this spiral, yet its dimensions augur the enormity of the future investments required. In cryptography, for example, a state desiring even temporary secrecy, must maintain vast batteries of computers for the rapid formation of new and more complicated codes as well as for the deciphering of the current output of other states.

The role of wealth in the dissemination of intelligence varies with the objectives of the specific intelligence participants and the targets which they wish to influence. A small, proximate target requires the maintenance of minimum channels. A global intelligence process, seeking to inform the broadest and most comprehensive audience, requires a vast and varied dissemination system. The need goes beyond maintaining physical channels. A staff of personnel is required capable of formulating the content of specific communications in terms comprehensible to chosen components of the global audience.

c. *Enlightenment*

The global stock of enlightenment is not equally dispersed but is scattered in clusters around the earth. Large sections of the world must still be characterized as an enlightenment wilderness almost wholly out of touch with contemporary science. The concentration of highly enlightened individuals in one sector does not, however, necessarily mean that they are solely at the disposal of exclusive policies. The inclusive community's potential draft on the aggregate world enlightenment pool is, in large part, a function of the perspectives of

89. See S. KENT, *supra* note 3, at xvi-xviii; A. ORLOV, *supra* note 34, at 8-9 and see p. 412 *infra*.

90. F. MACHLUP, *supra* note 10; R. GREEN, *supra* note 10, at 3.

enlightened individuals. If such individuals identify with transnational objectives, the available knowledge may be adapted to the inclusive needs of the global community.

Effective intelligence is often interfered with by exaggerated dependence on particular skills rather than on comprehensive and contextual considerations. Persons close to the operational phases of an intelligence process often tend to adopt a non-contextual view. General Orlov of the U.S.S.R., for example, in a manual on espionage, claimed that the core of the operation involved the infiltration of an agent who would then steal or copy the documents or objects necessary.⁹¹ Another version is presented by Sherman Kent, who believes that the core is the synthesis and evaluation of flows of data "bits," most of which are acquired openly and legitimately.⁹² The two methodologies are not incompatible, but it is clear that any intelligence operation, whatever the strategies employed, must be conceived and interpreted with a comprehensive map in mind.

It is, as yet, difficult to identify specific personality attributes of the greatest relevance to the intelligence function.⁹³ In addition to native endowment and broad education, all observers have emphasized creativity as crucial. Psychologists have tentatively identified a number of aptitudes whose convergence seems to result in creativity and there are informal indications that certain training techniques usually improve creativeness.

Among the psychocultural factors affecting the acquisition of knowledge is the willingness of a society to encourage some of its members to use enlightenment as a base for further enlightenment. In every society there are impatient or anti-intellectual elements who have no understanding of knowledge as a principal end and who reiterate the importance of prompt instrumental pay-offs in terms of weapons, wealth, health, or other value outcomes. It is no surprise that politicians in certain localities try to project a self-image of reassuring "folksiness" and to polemicize against the professional intellectual, as an "egg-head" or "long hair."

91. A. ORLOV, *supra* note 34. See also p. 395 *supra*. The difference between Orlov and Kent which has been much discussed in the literature on intelligence was probably overstated at the outset. Orlov's manual reveals that his conception of intelligence is always wartime intelligence, whereas Kent's conception is considerably broader. Kent does not rule out the value of the purloined document; he simply sets it in a context of aggregate intelligence for strategic decisions, in which its value shrinks considerably. On the war frame of Soviet intelligence, see O. HEILBRUNN, *THE SOVIET SECRET SERVICES* 49-55 (1956).

92. See note 89 *supra*.

93. *But see* W. PLATT, *STRATEGIC INTELLIGENCE PRODUCTION: BASIC PRINCIPLES* 249 (1957); S. KENT, *supra* note 3, at 180.

d. Skill

The skills involved in intelligence operations have undergone revolution and transformation. Efforts to clarify the goals of public policy call on the techniques of contemporary logic to classify doctrine, formula and miranda. The study of every territorial community calls for earth scientists and historians to characterize the broad outlines of the picture, and for appropriate specialists on each value-institution sector. Hence, lawyers, political scientists, specialists in communication, economists, physicians, educators, sociologists, psychologists and many other scientists of culture are involved. Competent specialists in the physical and life sciences are needed to assess the environment in which arena activities are carried on. As indicated before, the need of effective correlation among scientists and the decisionmakers has led to the emerging policy sciences.

Intelligence gathering draws upon every conceivable type of skill specialists. Some, such as survey interviewers, are quite overt. There are, however, some operations that generate experts on stealth and subterfuge. The differentiation of skills within the gathering and processing of intelligence is so great that schools have been established to supply competent talent. Some universities even offer courses in industrial espionage. Industrial laboratories often devote themselves to improved systems of machine recording and processing.

Some indication of the skills involved in even a legitimate and overt intelligence operation can be gained from considering a hypothetical Presidential Commission which has been directed to prepare an intelligence report on the extent and causes of urban violence. The gathering sequence may engage a variety of skills conventionally associated with pollers, content analysts, historians, geneticists, nutritionalists, demographers, physicians and so on. Processing may involve the formulation of a special computer code, punching, computing, reading results, preparing charts and so on. Analysis of the data collected involves all the skill groups initially active in the formulation and tentative identification of conditioning factors. And preparation for the dissemination of results requires a variety of new techniques.

This example, which has been drastically simplified and shortened, provides a rough indication of the range of skills involved in an intelligence operation directed at a specific facet of public order and not at the infinitely more complex global constitutive process. If the skills involved seem staggering, the shock should be tempered with the realization that many of these competences are regularly employed in the everyday credit operations of large American corporations.

The unequal global distribution of intelligence-related skills favors exclusive rather than inclusive results. Nevertheless a number of trends point toward the growth of concern for inclusive interests. Where transnational activities, thanks to their technical character, require transnational planning, inclusive intelligence structures emerge. National assets are merged, forming an international skill pool for intelligence operations. As interdependence increases, this trend will presumably accelerate.

e. *Well Being*

The capacity to perform any decision function is clearly dependent upon a measure of physical and psychic health. Below a certain threshold, the organism ceases to consider its environment in the realistic terms necessary for a successful decision. Well-being also has specific relevance for the performance of intelligence tasks. A minimum level of mental health—the capacity to view the environment and the self-system within it without intense neurotic or psychotic distortions—is crucial for the ultimate effectiveness of intelligence operations. The still recent examples of Stalin and Hitler, who were unable to exploit or at times even to assimilate the excellent and timely information provided by their vast intelligence establishments, dramatize the relation between rationality and effective intelligence. Subtler but more pervasive phenomena of this kind are the parochial national and sub-national biases that affect perception and cut off imaginative invention of policy alternatives.

Through history, a recurrent theory, in different forms, has contended that the optimum intellectual state of mind is one which has undergone deculturalization and has risen to a higher level of perception. This can be accomplished by Apollonian techniques of severe self-discipline, as in the exercises of Zen, or by Dionysian stimulations, as among the current apostles of psychedelic drugs. A variation, much discussed by the romantic writers of the 19th century and forwarded by such eminent artists as Thomas Mann in this century,⁹⁴ holds that illness performs the same function. The undeniable relationship between somatic conditions and psychic states remains to be fully explored.⁹⁵ Recent research suggests that deprivation of proper nutrients

94. T. MANN, *THE MAGIC MOUNTAIN* (English transl. 1927).

95. For one study, see R. MASTERS & J. HOUSTON, *THE VARIETIES OF PSYCHEDELIC EXPERIENCE* (1966). The entire area of the effect of drugs and more generally nutrients on decision-making remains distressingly uninvestigated. In many cultures, a variety of drugs are used regularly in stress situations and intensively in crisis. Nicotine and caffeine, to cite only two common examples, may have wide-ranging effects on metabolism, perception and response. Nor has there been investigation of the possibly beneficial effects of a variety of other drugs or nutrients in different components of decision sequences.

from pregnant women and consequently from their offspring produces children of limited mental capacity. The use of psychopharmaceuticals as a means of increasing mental capacity is still in the infancy of experimentation. The point to be emphasized, however, is that insights provided by such stimuli cannot be exploited unless the perceiver has a frame of reference, including a clarified set of goals, in which the experience can be placed.

f. *Affection*

Affection and loyalties are frequently critical to the performance of the intelligence function. On the personal level, the sharing of intelligence may be an extremely intimate and multiply motivated transaction. Physical seduction has been and continues to be a technique of espionage. Ideological seduction, the persuasive transference of loyalties from one public order system to another, is a recurring historical phenomenon that appears whenever power struggles are infused with clearly contraposed value systems. The ideological hero or traitor is one who continues to profess loyalty to a group while secretly transferring intelligence⁹⁶ to an adversary who commands his true allegiance. Although our references to the phenomenon have been in a context of interstate struggle, it is obvious on reflection that the process may equally operate between exclusive units and the inclusive global community, particularly in contexts where tension is perceived between the interests of the world community and of particular states.

To the degree that loyalties follow family, ethnic or class lines, these situations serve as a base for intelligence, often by means of threat or blackmail. In public order systems which as a matter of policy encourage the family unit, prescriptions may seek to immunize intra-familial ties from intelligence exploitations, by characterizing them as privileged communications. Thus, spouse may neither be compelled nor permitted to testify against spouse; in different systems, all or part of the privilege may be extended to other family members. International prescriptions have now guaranteed family integrality as a matter of international right,⁹⁷ and barring future changes in the conception of

96. This mixed status is a frequent feature of pluralistic societies and it can be expected to increase in the future as identity systems extend to include loyalties to a number of groups which may at times conflict. Terms such as spy, traitor and espionage are highly emotive and are regularly used by members of contesting groups rather than by observers. The matter is in need of urgent study. For one view, interesting because of the mixture of sympathy and revulsion, see R. WEST, *THE NEW MEANING OF TREASON* (1964).

97. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, G.A. Res. 1763A (XVII) Nov. 7, 1962; Declaration of the Rights of the Child, G.A. Res. 1386 (XIV) Nov. 20, 1959.

the family institution as a protected public order feature, it is probable that privileges comparable to those granted on the national level will be extended in international law.

g. Respect

A respected intelligence participant maximizes his capacity to gather and disseminate information. An intelligence gatherer reassures his sources that data which they supply will be used for a defined purpose and otherwise will be held in strict confidence. The credibility of these assurances depends upon the respect enjoyed by the intelligence collector. Whether the situation is a diadic micro-arena, such as doctor and patient or psychoanalyst and patient, or broader arenas in which an international organization seeks release of data held exclusively by a nation-state, implicit understandings of trust and confidence are crucial base values. A spy security crisis in one state may lower the willingness of other states to continue to share defense information. Even the furnishing of data for an ordinary credit transaction is affected by confidence perspectives and will be retarded by evidence of a probable breach.

Prescriptions can influence the flow of intelligence among participants whose images of one another are vague or otherwise tainted, by spelling out the precise nature of reciprocal claims, including modes of recourse to obtain remedies for a breach.

The respect position of the intelligence-processor or disseminator is of equal importance to those who perform the initial function. The cues for respect vary according to the target audience and an efficient service takes care to clothe the communication with the indicia most appropriate to the recipient: dense footnoting for a scholarly group; an unfootnoted and folksy presentation, perhaps ridiculing jargon, as a means of appealing to an anti-intellectual audience; a quasi-religious tone for dogmatists; and so on. A crucial component of the effectiveness of an intelligence report may be the channels employed. In some settings, for instance, radio-TV is more credible than newspapers, but less credible than magazines or books.

Constitutive prescriptions can provide for special means to be used to heighten the respect accorded to particular intelligence reports. For instance, top level personnel and special sessions of government agencies can be required to participate in the preparation and announcement of five-year or other plans.

h. Rectitude

The impulse to share or suppress intelligence is compounded of many factors. In particular, restraints of conscience may be critical.

Rectitude in the form of self-vindication before the imagined bar of history often motivates political memoirs and, on a day to day basis, is probably a factor in much routine sharing of transnational intelligence.

During World War II Soviet intelligence operatives in Great Britain, Canada and the United States were able to appeal to the sense of injustice presumably being done to Russia by excluding an ally from knowledge of new weapon developments, particularly in the nuclear field. A regular feature of the political process is information leaks originating with informed decisionmakers who are outraged by the immorality or irreligious policies under consideration by their own governments. As inclusive identifications increase, voluntary participation in the global intelligence process will undoubtedly be stimulated by rectitude demands. It will be intolerable to the consciences of many scientists and other men of knowledge to stand aside while their nation-state or political party perverts science to destructive purposes.

Such opportunities are likely to be seized and encouraged by priests, ministers and rabbis who are full-time specialists in the cultivation of ethical and religious belief and conduct. Institutions of rectitude have always been latent or overt enemies of the elites of power; hence, the extraordinary ruthlessness of the measures that have so often been taken by secular authorities to reduce the devotees of rectitude to the status of a compliant instrument. Today it is recognized among many ecclesiastical groups that they have no future save as recognized servants of universal man.

If constitutive prescriptions are too weak to provide protection to conscientious informers, they nevertheless may gradually gain from the example provided by men of conscience who defy parochial loyalty.

E. *Strategies*

The strategies by which intelligence is gathered, processed and disseminated are adapted to the requirements of those for whom the operation is carried on, and to the circumstances to be utilized or overcome in executing the complex tasks involved. A principal problem of the world constitutive process is how to encourage the strategies capable of delivering the results adequate to decision without transgressing the limits appropriate to a preferred system of public order. A recurring issue is the degree of coercion to be tolerated. In nation-states where human dignity is taken seriously the general norm appears to be that neither public nor private coercion shall be used save in exceptional circumstances. When the intelligence sought is of great importance for

public policy it is permissible for public authorities themselves to use coercion, with procedural safeguards, to obtain the information needed, or to block the access to information of those who seek to employ it for impermissible purposes. In the transnational arena trends are moving in the same direction insofar as prescriptions are concerned. Little, however, has been done to bring about effective, inclusive application.

1. *Gathering*

a. *Military Strategy*

The use of armed force is severely limited by conventional and customary international prescriptions. Hence presumptions against its lawful application to intelligence gathering are obvious. Yet closer analysis of actual tolerated practices indicates that compulsive and coercive techniques of intelligence gathering have been deemed lawful where other critical constitutive policies have received appropriate compliance. In theory, the compulsive powers of the United Nations Security Council, operative upon a finding of a threat to the peace, could be applied to the gathering of critical intelligence and could, moreover, be delegated to another international organ or to a state for the same purpose. In conventional Charter terms, the General Assembly could not ordinarily impose the same degree of compulsion, but in practical terms, it might in certain contexts dispose of sufficient authority and control to create a compulsory intelligence gathering process. In comparable manner, regional organizations might dispose of enough authority and control to engage in compulsive intelligence operations. An organization, such as the ILO, while not resorting to the military strategy, has a wide sanction at its disposal for requiring the release of intelligence which it believes to be within its statutory jurisdiction.⁹⁸ National courts, when seised with international cases, become functional international decisionmakers and will apply a wide range of compulsive intelligence gathering techniques, for which they are authorized under their own national law.⁹⁹

The fundamental international policy of the lawfulness of compulsive intelligence gathering is clearly presented and applied in the judgment of the International Court of Justice in the *Corfu Channel* case.¹⁰⁰ In that case, British warships had sustained damage with crew injuries and deaths, while proceeding in innocent passage through the Straits of Corfu. Subsequently, British ships swept the straits and

98. See generally E. LANDY, *supra* note 31; E. HAAS, *supra* note 31, at 245-52.

99. W. REISMAN, *supra* note 24, at ch. 17.

100. [1949] I.C.J. 4.

seized a number of mines which had been laid there. The purpose of the British sweeping operation was two fold: to clear the straits so that innocent passage could be made and to collect evidence establishing Albanian responsibility for the mining. When the case was brought subsequently to the International Court of Justice, the lawfulness of the British mine sweeping was challenged. The Court held that the United Kingdom's action was an infringement of Albanian sovereignty, but it refused to impose any further sanction upon the United Kingdom, other than the verbal rebuke of the judgement. The Court did not, however, deem the mines which the United Kingdom had unlawfully swept inadmissible as evidence. On the contrary, it relied upon the evidence of the mines and based a number of factual conclusions upon them.

The *Corfu Channel* case cannot be invoked as a precedent for the proposition that the coercion level of intelligence gathering activities for authoritative decision is not a component of its lawfulness and is not a criterion in the ultimate admissibility of the intelligence gained before authoritative decisionmakers. But considered in the light of other judicial dicta and general international law's present halting response to exercises in coercion, it may be stated that the mere fact of coercion will not invalidate the admissibility of international intelligence before authoritative decisionmakers. Coercion like all other facets of the case will be given a contextual and goal-sensitive relevance and conclusions as to the admissibility of evidence will be drawn in terms of these factors rather than in terms of coercion alone.

On the national level, the employment of coercion as a means of acquiring intelligence is verbally condemned as an intolerable infringement of human dignity, but in a large number of states, such coercion is regularly practiced, if not with the complicity of authoritative structures, then at least in the absence of any authoritative checks. Presumptions of innocence and barriers against self-incrimination are a relatively rare feature of contemporary national processes. The use of physical and psychological torture as a means of extorting evidence is prohibited by a number of international conventions¹⁰¹ and cases of official use of torture have been corroborated and condemned by responsible private associations. Yet there is no question that the practice continues and that it is becoming more sophisticated and insidious as neural-electric and pharmacological techniques are adapted and employed.

101. Article 5, Universal Declaration of Human Rights, G.A. Res. 217A (III), Dec. 10, 1948; Article 3, Convention for the Protection of Human Rights, May 5, 1949.

b. *Ideological*

The gathering of intelligence through the sifting and distilling of communications between rank-and-file members is an ancient technique. Spies and informers always monitor the gossip of the market place, the forum and so on, for indications of popular perspectives and even more detailed knowledge. In crisis times it is routine to censor private correspondence and to obtain indicators of the state of morale among all layers of the population. Clues may be found that point to conspiracies against public authority. In times of crisis elites regularly exhort the populace not to speak of any matter which might have security significance since "the enemy has long ears."

With the advent of systematic communications analysis at the beginning of the 20th century, the ideological medium became one of the more fruitful sources for intelligence of all types. Manifest and latent content analysis of the communications of popular culture now provide a regular source of knowledge in regard to almost all value processes. Local authorities attempt to block the sending of publications abroad that would reveal information about the changing levels of disaffection. Hence a problem for future prescriptions is how to keep open the channels for obtaining ideological intelligence.

c. *Diplomatic*

The gathering of intelligence on the elite level, through small group contacts, diplomatic intercourse, spies and more recently international bureaucrats, is a continuous process which is ancillary to almost all elite contact. Its volume is proportionate to inter-elite associations; as these increase in every value process, the gathering of intelligence by the diplomatic mode can be expected to expand.

The techniques for extracting information on the person to person level have become extremely refined. Personal interviews and participant-observation are considered legitimate modalities. There is, however, a shadowy world in which promises of indulgence to individuals are employed to persuade them to part with information or to recruit themselves in an intelligence network. Less fortunate individuals of the contemporary world, such as refugees and displaced persons, are extremely vulnerable to blandishments of security in return for intelligence services. It is doubtful whether any effective prescriptions are presently available to restrict the use of coercion against individuals who are believed to possess information.

d. *Economic*

It is generally recognized that a transnational economic activity, whatever its scope, necessarily obtains intelligence about much more than economic conditions; hence, the resistance of nation-states to foreign owned or controlled corporations. From the standpoint of world inclusive intelligence it would appear that whatever encourages transnational economic operations is likely to generate important grist for the mills of public policy.

2. *Processing*

The most radical changes which the development of technology have precipitated on the performance of the intelligence function have been felt in the processing sequences: in the storage, retrieval and interpretation of data which has been gathered. The limited number of cross-filing methods which were used until the recent past were comparatively crude and cumbersome and limited maximum exploitation of data which was available. Either retrieval was too slow or the organization of the processing sequences did not allow for comprehensive syntheses of raw intelligence. Refracted and non-comprehensive conceptual models also impeded the requisite contextuality of perception. Primitive processing techniques often precluded the use of intelligence which had been gathered but which was, in effect, operationally inaccessible or the integration of existing intelligence into a comprehensive picture. There are innumerable examples in a variety of value processes of defective interpretation and consequentially mistaken planning because relevant value processes were not considered in the projection of probable future trends.

The development of operational cybernetics has revolutionized the processing of intelligence. Microfilm and computerized storage banks have liberally extended the quantity of intelligence data or "bits" which any intelligence process can draw upon at one time and the future possibilities appear to be virtually unlimited. At the same time, new groups specializing in intelligence processing have grown rapidly. Intelligence servicing industries seem to have reached a take-off point; the interaction between these specialists and the industry stimulates continuous appreciation of operational problems and the invention of new methods.¹⁰²

There has been a comparable improvement in the comprehensiveness of focus in intelligence processing. Whether the focus is upon a

102. A collection which well illustrates this trend is R. GREENE, *supra* note 10. See also C. ELLIOTT & R. WASLEY, *supra* note 10; *The Flow of Scientific Research Information to Industry*, OECD Observer, April, 1964 at 12.

credit rating or a report of a Presidential Commission or Royal Commission or of a regional commission of the United Nations, one observes a tendency toward functional equivalents of comprehensive phase and value analysis.

There are, to be sure, quality gaps in the processing of intelligence at all levels of social process. Matters as fundamental as the question of which communications to document and how to document them have not been resolved; as the institutional structure of the world community changes over time, problems of this sort will continuously reappear in different guises. There are also periodic squabbles over comprehensive contextuality as opposed to more refracted foci or to aggregate methods of compilation and interpretation of social intelligence. And as new quantities of intelligence are processed, load capacity problems recur.¹⁰³

From the global constitutive perspective, the most deficient past trend—and one which must be projected into the foreseeable future—has been the geographical inequality of intelligence processing capacities. A striking contrast in the world arena is between technological communities, on the one hand, which have proceeded so far in the gathering and processing of intelligence that the problem which they encounter is one of policy, the narrowing domain of privacy, and, on the other hand, technologically underdeveloped communities in which such minimal information as a head count is not available. As global interdependence increases, this imbalance will ultimately prove to be detrimental to planning on the part of even the most developed communities, and will give greater impetus to the sharing of processing technology.

3. *Disseminating*

The strategies of dissemination relate to the modalities by which processed intelligence is conveyed to the attention of participants involved in the performance of all other decision tasks. These operations are primarily diplomatic or ideological, in the sense that they concern communication to restricted elite groups or to the broad rank-and-file. In a less visible manner, the military and economic strategies may be integrated in different sequences of dissemination. Force may, for example, be used in securing the instruments of popular dissemination; standard procedure in *coups d'état* is seizure of the national radio stations.¹⁰⁴ As a political strategy, a new regime may open the hitherto closed archives as a manifest political strategy, as the Bolsheviks claimed they were doing in 1919. Similarly, access to bases of wealth

103. K. DEUTSCH, *supra* note 1, at 214-44.

104. E. LUTTWAK, *COUP D'ÉTAT: A PRACTICAL HANDBOOK* (1969).

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may permit a disseminator to print leaflets or newspapers or to mount jamming transmitters as a means of blocking broadcasts from other countries.

A fundamental constitutive goal, as we have noted, is the maximum possible dissemination of intelligence to all participants who may be affected by its use. The physical means for achieving this scale of dissemination are unquestionably available. The global network of communications via satellite radio and television links as well as the more traditional forms such as the mass press are capable of bringing an adequate flow of processed intelligence data to the attention of every individual in the world. The quantity and quality of actually delivered intelligence fall below constitutive goals for a number of reasons. National elites have maintained close control over the intelligence flows available to the masses. It should be noted that the great news agencies of the world are national agencies which frequently propagate national biases.¹⁰⁵

The sequential position of dissemination as the last of the components of the intelligence process should not be interpreted in the most trivial chronological sense. Many of the most important infrastructural features of the dissemination process are consciously established long before they are used as conduits for the actual dissemination of intelligence; hence, the subtle but enormously important role of education in the intelligence process. Learning is, of course, an ongoing process which is never monopolized by a single institution. Yet the official institutions of education, which can require (with official sanction) the presence and conformity of vast segments of the population, do present an authoritative "map of reality" for the young. Obviously, the educational process is a crucial base of elite power and an extremely effective point for influencing the intelligence function. There is no indication that national elites have failed to utilize this institution as a base of power and a strategy of dissemination.

F. *Outcomes*

The most conspicuous trend in intelligence outcomes is that of a proliferating abundance in the gathering, processing and dissemination of information. Thus, the "planning" function has become ubiquitous at all levels of government—local, national, and transnational—and throughout the increasingly pervasive and transnational network of private associations dedicated to the shaping and sharing of all values. Though in many of these institutional contexts provision for the planning function may be more symbolic than real, in the sense that per-

105. T. KRUGLAK, *THE TWO FACES OF TASS* 7-20 (1962).

formance falls short of promise, there is in fact much more effective performance of this function, indispensable to all rational decision, than ever before. Happily, because of the contemporary technology of communication and advances in the education of peoples, this accelerating ubiquity in the performance of the intelligence function characterizes even its dissemination phase. There are more students, newspaper readers, radio listeners, television watchers, and aware community members than heretofore, and the popular attention focus in the many diffuse localities about the globe has become increasingly inclusive.

The wide perception of the interrelation of phenomena has, perforce, rendered intelligence gathering a global operation requiring more institutional and *ad hoc* cooperation across political boundaries. No decisionmaker who hopes for any degree of effectiveness in decision can today conceive important problems in merely national or regional terms, without taking into account the more comprehensive processes of the earth-space arena. There seems to be a general trend toward increasing comprehensiveness in focus and, despite a number of structural pathologies, an increase in the availability of intelligence to decisionmakers at different hierarchical levels. Most important, the United Nations, with all its internal bureaucracies, and the host of specialized agencies and regional organizations, whose principal manifest competence is that of intelligence, have brought a hitherto unimagined inclusivity to the gathering, processing, and dissemination of information. It must be acknowledged, however, that the dissemination or communication of intelligence does not always attain appropriate degrees of inclusivity. Too many participants in the global process continue to regard the information they gather, though of inclusive import, as their national or private property. The consequence is that many decisions of inclusive, constitutive or public order impact are still taken on incomplete intelligence or unrealistic grounds.

The dependability of intelligence, which varies almost as widely as its comprehensiveness, seems to be a function of public order and value structuring rather than geography. Where intelligence has become politicized or is a component of a garrison state trend, dependability has suffered. Where intelligence producers have insulated themselves from these conditions, dependability has increased.

Relevance appears to follow the same pattern: "Who pays the piper calls the tune." Insofar as elites have set intelligence goals either for the entire public order or for specific sectors, intelligence outcomes have configured their special interests and only indirectly or coincidentally the preferred goals of an optimum public order. A signif-

icant counter-trend has been, as noted, the tendency of intelligence specialists themselves to organize against such elite pressures and to attempt to police relevance within the knowledge establishment.

The most varied outcomes have been achieved in relation to openness and availability, particularly as concerns the dissemination phase. Trends in terms of these criteria resist any single analysis. The phase of dissemination, as we noted earlier, represents a complex flow of events in which a variety of different participants and structures interact. From the moment of retrieval of processed data to the moment when it is delivered to a specific consumer, successive operational and intelligence choices are made which may ultimately affect the target, modality and substance of dissemination. While conscious and unconscious political motives may influence decisions about dissemination,¹⁰⁶ it is important to emphasize that a great many dissemination choices, no matter what their political effect may be, are taken for manifestly non-political reasons.

The examples of this mechanism are abundant. Some information may be routinely discarded as insufficiently important to merit elite consideration. Technical limitations may render the communication of some data difficult or impossible. A newspaper which publicly commits itself to publish all the news obviously cannot do that because of time and space limitations; it will, perforce, suppress some material which has already undergone processing and has undoubtedly affected the perspectives of those individuals involved in that segment of the intelligence process. Or an intelligence agency may labor under a directive from the executive apex which it serves, insisting that all communications be no more than two page memoranda composed in only bisyllabic words. Or the quantum of relevant intelligence may so far exceed the load-capacity of the channels carrying it to elite targets that its delivery must be indefinitely postponed.¹⁰⁷ In all of these examples, the functional suppression of processed intelligence is caused by structural features of the intelligence operation rather than by conscious decisions to suppress for specific value reasons.¹⁰⁸

Decisions to suppress some processed intelligence presuppose authoritative expectations about the audience appropriate for intelligence

106. See, e.g., A. ROWSE, *APPEASEMENT: A STUDY IN POLITICAL DECLINE* (1961).

107. See Speeckaert, *Methods of Dissemination of Results Achieved in the Activities of International Organizations*, 16 Int'l Assoc. 398 (1964).

108. R. MERTON, *SOCIAL THEORY AND SOCIAL STRUCTURE*, (rev. ed. 1957); T. PARSONS & E. SHILS, *TOWARD A GENERAL THEORY OF ACTION* (1951). Any consideration of intelligence draws attention to subtle dimensions of "structure", whose importance is less evident than in other areas. The comparative structure of languages, for example, can affect dissemination in a number of ways, as can the cognitive maps which are acculturated at early phases of development.

products. We are not concerned here with the delineation of a catalogue of constitutive claims to suppress or restrict the dissemination of intelligence products, but rather with suppressions which either reflect structural pathologies of the intelligence process or are indicative of unlawful manipulations of knowledge to secure other values.

In certain institutions demands to disclose intelligence and sanctions for suppression are stated in highly explicit form. Yet in each value process the policies actually made effective are ultimately inconsistent. Consider the shaping and sharing of wealth. In theory, insider information is not to be used until it has been made available to the general investing public. At the same time, there is no sanctioned general prescription for the free interchange of information relevant to the wealth process, despite the fact that the assumed effectiveness of a free market economy is based upon such unrestricted interchange. In fact, much information of public consequence has been invested with the character of "private property" and private efforts to discover it are considered forms of business espionage. Authoritative attempts to police intelligence data which should be publicized must work through a network of tortuous delictual concepts, which have been rendered obsolete by the techno-communicational revolution and the restructuring of the contemporary consumer market.

Parallel inconsistencies are found in the express and customary prescriptions regarding intelligence dissemination in other value processes. In the affection process, for example, cultural ethics set a high premium upon the free interchange of ideas and information within the family circle. On the other hand, public order prescriptions impose sporadic sanctions upon inter-familial and inter-conjugal suppressions. In the skill process, it is now accepted that the technician will suppress technological advances which he has innovated in order to maximize his position as opposed to that of management. Despite the obvious common interest in the sharing of such skills as a means of maximizing the production of goods and services, class and strata tensions create a climate of distrust sufficiently strong to support a practice of intelligence suppression detrimental to optimum community process.

The policy and practice of intelligence dissemination in the power process has many dimensions. Within formal structures, an intelligence agency or department is not authorized to suppress intelligence which will be of possible use or interest to the elite which it serves. Suppressions do, nonetheless, take place under a variety of disguises. Departmental rivalry, personal ambition, a self-censorship aimed at pleasing rather than serving an elite can motivate suppressions. Suppressions may take the form of routine sidetracking, or low-priority rating

which indefinitely postpones investigation, and so on. On a more manifest level, a formal intelligence organ will be most reluctant to divulge information about itself and its operating procedures to another coarchical or hierarchical organ charged with appraising its activities. Such suppressions, justified in terms of group security and the continuing efficaciousness of operating procedures, act as a major bar to appraisal and to effective inclusive control of intelligence activities.

The most persistent challenge to a democratic world public order in the performance of the critical intelligence function does not lie in the partially remediable structural pathologies of intelligence dissemination. It is, rather, found in elite suppressions of intelligence which, according to general expectations of authority, should be made available to broad segments of the rank-and-file. Where the general constitutive process has established effective participatory roles for all individuals, the intelligence function includes the unrestricted dissemination of the intelligence to the population at large. If those responsible for the final step block dissemination, then intelligence is being used against constitutive policy and with widely permeating consequences for the sharing of power.

Statistical documentation of the degree to which the intelligence slated by constitutive policy for unrestricted dissemination is or is not actually disseminated presents major operational problems. A variety of indices are, of course, available. But the ultimate contextual evaluation calls for an assessment of intelligence output in terms of the appropriateness of the presentation to the intellectual level of the audience. As noted earlier, when the audience is incapable, by reason of internal personality structuring, socio-political self-perception or lack of minimum enlightenment and skill, of absorbing or acting upon received intelligence, the act of dissemination becomes a ritualized caricature of effective power sharing.

Disseminated intelligence which is delivered to effective decision-makers does not dictate a certain choice. Accepting the goals of the community in question, the intelligence function provides contextual detail and the probable consequences, in terms of aggregate value gain and loss, of alternative courses of decision. Thus, the question whether decisionmakers adopt the intelligence reports which they receive is a misleading question. If they receive the report and acquire some further insight into the decision alternatives facing them, a minimum goal of intelligence will have been realized. Adoption of one of the alternatives suggested by the intelligence function is, of course, pleasing to intelligence functionaries, and some instances of adoption provide the necessary feedback to intelligence personnel, assuring them of the

political reality of their labor. Yet it must be emphasized that rejection of an intelligence recommendation does not signalize the failure of the intelligence function. As an intelligence specialist put it:

The intelligence consumer who has been close to the problem of the producer, who knows it inside out, may have an insight denied the producer. His near view of the broad aspects of the problem and his remoteness from the fogging detail and drudgery of the surveillance or research may be the very thing which permits him to arrive at a more accurate synthesis of what the truth is than that afforded the product.¹⁰⁹

III. CONDITIONS

The real test of the effectiveness of the intelligence function, whatever the community, is of course in its contribution to the more rational performance of the other six functions. The full ramifications of this dependence at the global level will be examined as we consider, in detail, each of the other functions. For the moment it suffices to note that increases in the flow of intelligence, conforming to the criteria appropriate to such an output (dependability, comprehensiveness, and so on), have greatly affected promotion, prescription, and all the other components of decision.

Conversely, how the various other decision functions are performed has important consequences for the quantity and quality of intelligence. Promotional activities tend to seize upon particular intelligence findings and to give a distorted picture of reality by disseminating them further as a means of adding plausibility to particular demands. Often the over-emphases fostered by one promotional campaign are corrected by other campaigns conducted by opposing interests. But it requires an exceptionally firm faith in an invisible hand to believe that during limited periods of time the play of competitive forces is so finely adjusted that the waters of fantasy are squeezed out of significant communication flows. Successful promotions affect policy objectives and boundaries of credibility. Hence intelligence operations are expected to serve modified purposes and to win the confidence of committed official and unofficial groups.

When successful promotions culminate in prescriptions, the frame of reference in which intelligence operations are carried on is more permanently defined, and challenges carry more risks to the challenger. Prescriptions include not only norms but expectations about the contingencies to which they refer; and since norms are usually enacted and accepted with concrete instances in mind, intelligence operations cannot

109. S. KENT, *supra* note 3, at 203-04.

proceed to interpret otherwise ambiguous language with impunity. Norm and contingency components of a prescription are also associated with sanctioning provisions and expectations. Problems of enforceability complicate the task of intelligence suppliers.

In the wake of accepted prescriptions follows a series of activities that burden and rearrange intelligence tasks. Contending parties or uncertain officials invoke prescriptions in concrete circumstances, and expect to obtain pertinent and often claim supportive detail from the services. At the application phase intelligence organs are expected to operate with more definitive statements. Every new prescription is likely to include some problems of termination as well as appraisal.

Given the multitude of specific requirements with which intelligence functionaries are harassed, it is not astonishing to discover that the more aggregative and future-oriented dimensions of the intelligence tasks have been neglected.

The more general conditions affecting the constitutive intelligence function represent a pattern of interacting factors, both predispositional and environmental. Each of these requires brief development.

Predispositional

The most striking change is found in enhanced demands for intelligence, which have reached a new level of intensity, and in increased acceptance of the relevance of intelligence. The overall effect of these demands has been the creation of what may be described as a global intelligence culture.

From the standpoint of an observer, every participant in social process manifests a varying "intelligence utility." By this we mean that in different contexts, a participant is capable of playing a role in the intelligence function, drawing upon such idiosyncratic bases as his social position, his sphere of activities, special skills or unique personal experience. In a culture which is not particularly sensitive to the political or other value effectiveness of intelligence, the concept of intelligence utility may be appreciated best by especially conditioned subsections of the community. Thus, in a pluralistic society, oppressed minority groups will be particularly sensitized to the dangers of an informer from within and will develop intensely held doctrines, formulas and miranda to deter informers and to authorize harsh preventive and punitive sanctions by the group against actual or potential informers. In such circumstances, the minority group is obsessed with the reciprocal dependence of each member of the group on the other members for the most minimum security; there is a high awareness of negative intelligence utility. In the underworld intelligence utility is

treated more ambivalently because it is found in a considerably more cross-pressured setting. The informer is despised as a threat to individual and group security and is subjected to an authorized code of intense sanctions, including popular vilification. On the other hand, intelligence utility has many positive aspects: the necessity for reliable intelligence in a successful operation is well appreciated. Insider knowledge is essential to certain operations, such as blackmail, and the criminal's primary base of power is intelligence utility. A comparable ambivalence is found in the police sub-culture; some manuals of police investigation specify in detail the intelligence utility of different individuals in different contexts, including an estimate of the tactics that will elicit the information needed. Often the tactics are in the "gray zone" of law enforcement in which ordinarily immoral and illegal means are employed.

Where entire segments of the population of more inclusive groups habitually consider their intelligence utility vis-à-vis official and/or effective processes, we may speak of the emergence of an intelligence sub-culture. In a city such as Paris, for example, where the police reputedly rely upon a vast group of informers spread through the hotel, restaurant and entertainment industries, every concierge and ultimately every individual privy to some aspect of the lives of another may consider himself in terms of his intelligence utility. In any interactive group, of course, an observer will have no difficulty in assessing the intelligence utility of each individual. But so long as shared perspectives of group members and in particular persistent ethical notions of privacy and respect for the integrity of each group member tend to obstruct the perception (conscious gathering and processing) of details about others, the total aggregate is not permeable to outside surveillance.

Most indicators point to a trend toward a universal participation in the shaping and sharing of enlightenment, hence, in the intelligence function. Although waves of popular anti-intellectualism continue, knowledge is increasingly viewed as a desirable commodity, alternately a crucial base and scope value. Perhaps equally significant, the conventional processes in which knowledge is thought to be acquired are viewed as increasingly accessible to all people. Statistical series show that more people are involved in the production and distribution of knowledge than heretofore and trend projections indicate continued growth of personnel in this sector.¹¹⁰ In studies *about* knowledge, it is significant that the economic view of knowledge as an independent exogenous factor has been superseded by the notion of knowledge

110. F. MACHLUP, *supra* note 10, at 377-400.

as an endogenous variable dependent upon the allocation of resources within a cultural frame.¹¹¹ In terms of our basic social process model, the enlightenment value-institution sector is more fully perceived as among the major components of decision-making in the world community.

The convergence of technology and political crisis has acted, on the level of personal consciousness, to accelerate the diffusion of participation in the intelligence phase of every value-institution area. Technological innovations have made it increasingly easier to spy on others in their business and personal activities.¹¹² The popularization of these techniques in the media has made notions of intelligence utility personal and real to each individual. At the same time, global political crisis has subjected the general population to experiences which were formerly the exclusive property of a few. There are rough parallels between the security crises of the 1950's in the United States and the Stalinist period in the U.S.S.R. In the United States, loyalty traumas lead to inclusive toleration by the general community of the destruction of life careers on the grounds of faulty and at times fantasied evidence in procedures diverging from authoritative standards. In the U.S.S.R. every individual was expected to be an informant for the state; the child who informed on his parents was held up as an official example of appropriate inclusive devotion.

A coordinate predispositional development has been the rapid increase in differentiated identifications. There are more and more groups in the world and each of them seeks intelligence as a means of maximizing its own preferred values. At the same time, the facts of interdependence have emphasized that the most mundane behavior depends upon knowing a great deal about others. A trend toward the sharing of intelligence is countered by impulses to withhold intelligence findings from non-group members.

Environmental

Most of the environmental conditions affecting the global intelligence process have been mentioned or implied above: the technological revolution, the fractionalized division of labor and the increased apportionment of manpower and facilities to intelligence activities.

Crisis, as we have seen, is a major factor affecting the global intelligence process. From the standpoint of an objective observer, an

111. See F. MACHLUP, *supra* note 10, at 13-43.

112. See R. GREENE, *supra* note 10; A. WESTIN, *supra* note 86.

appropriate inclusive policy about crisis is one which is aimed at either dissipating crisis or, where this is not possible, checking it in such manner that it does not increase in intensity. To a participant, a crisis is indicative of a breakdown in collaborative patterns. To an observer in contrast, crisis may be perceived as evidence of more intense collaboration. Crisis, even when it is a reflexive state of mind in only one participant, is interactive in the sense that it requires the image of at least two participants. It may be considered an act of intense inter-relationship in that the other, though depicted as hostile, is raised to a new level of prominence in the crisis-ridden personality.

In certain circumstances, deprivations of intelligence, superficially appearing as automatic response to crisis, may be viewed scientifically as an inclusive preferred policy of coping with crises. If, for example, the deprivation of intelligence, whether unilateral or reciprocal, will predictably minimize a participant's resort to intense coercion, restrictions on intelligence gathering would represent prescription with a sound policy basis. The requisite circumstances would be such that the unavailability of information as to the adversary's capabilities and intentions would markedly increase the risks involved in unilateral coercive action. However, in circumstances in which the absence of intelligence regarding an adversary's capabilities and intentions would increase the risks in not undertaking unilateral coercive action, inclusive policy should clearly favor prescriptions facilitating the interchange of intelligence. Similar contextual analysis can be applied to any of the other characteristics composing the syndrome of crisis response. The point is that rational policy and prescription are not a rationalizing correlation of instinctive responses to crisis but rather the invention of different strategies aimed at realizing basic policy in widely varying contexts.

The policy about crisis most in accord with inclusive common interests is one facilitating the reciprocal collection of intelligence for security purposes. The international security system is not one supported by effective hierarchical institutions. Security rests, if somewhat uncertainly, upon a system of reciprocal deterrences, which are precariously institutionalized through threats of retaliation and promises of reciprocity. The nuclear powers have achieved a capacity to destroy each other. The most serious threat to the balance does not reside in the possibility that one side will perceive a strategic gain by a first strike, since all projections have negated this outcome. The danger lies rather in the possibility that one side may misread the capabilities and intentions of the other and, hence, come to believe that its options have been narrowed to striking first or being struck first.

While this functional system is not one to provide individuals with a high degree of personal security, it has, so far, avoided a nuclear catastrophe. It requires no imagination to point up the weaknesses of a balance of terror system and its essential absurdity in terms of the cost-gain ratio for achieving a stalemate. Yet there is no gainsaying the realist who emphasizes the mutual distrust of nuclear powers and, hence, their inability to back away from a precipice of their own creation. Accordingly, creative efforts have been aimed at stabilizing the balance of terror and preventing it from spiraling further. Since, for example, the technological capacities of the nuclear giants are roughly equal, any major weapons or defense improvements or innovations by one side will predictably be developed by the other, cancelling out any unilateral strategic benefits. As a result, informed appraisers argued against American development of an extensive ABM system, both because it would be neutralized in the long run by a comparable Soviet response and it would destabilize the balance in the short run.¹¹³ A strategic decision such as this is obviously devoid of all utility if it is not fed immediately into the adversary's intelligence system.

Inclusive international endeavors in the field of global security have based themselves upon the reality of a balance of terror system. Intensive effort has been directed at improving the international climate by extending patterns of collaboration to the point where strong perceptions of inextricable interdependence and the necessity for trust will supplant the prevalent suspicion. The potentialities of genuine disarmament increase proportionately with the level of interidentification and trust. Such activities do portend a feasible key to dissolving the impasse, but their realization is obviously a distant goal. The complex of subjectivities comprising the syndrome of parochialism is intensely held and appears to be strengthened in periods of crisis to group integrity or independence. Hence, at the operational level, organized international activities have sought to attenuate as much as possible areas of possible clash between nuclear powers. The doctrine of preventive diplomacy attributed to the late Secretary-General Dag Hammarskjöld meant in essence rushing the United Nations into a regional or local crisis before a power vacuum drew the giants in.¹¹⁴ Clearly, this policy reflects the interests of all nation-states threatened by the effects of atomic Armageddon.

113. See A. CHAYES & J. WIESNER, *ABM: AN EVALUATION OF THE DECISION TO DEPLOY AN ANTIBALLISTIC MISSILE SYSTEM* (1969).

114. See, e.g., 12 U.N. GAOR, 12th Session, 690th Plenary meeting, paras. 72-73 (1957); 13 U.N. SCOR, 837th meeting, paras. 10-16 (1958). See also Schachter, *The Relation of Law, Politics and Action in the United Nations*, 1 HAGUE RECUEIL 200 (1963).

The key to the contemporary global security system is a reliable and unremitting flow of intelligence to the pinnacle elites of the nuclear powers. The tension between this inclusive demand and the normal crisis response of the attenuation of intelligence sharing is largely responsible for the bewilderment surrounding the legal aspects of intelligence gathering operations. While nation-states have continued to enforce national espionage statutes with vigor and on occasion to generate political power from asserted dangers of the enemy within, they have become increasingly candid about their own intelligence gathering activities. It is no longer surprising to find a national elite laying claim to one of its captured operatives and participating openly in bartering arrangements for his release. Such practices cannot, it is clear, be interpreted as condonations of the penetration of the territorial integrity of a state or as initial equivocations regarding the validity of national espionage laws. But these practices are significant as indicators of new perspectives, at least at the elite and sub-elite levels, regarding the collection of security intelligence. Further evidence of this trend, if it is necessary, can be found in the high tolerance level which has been achieved in regard to legation based espionage activities operating under the mantle of diplomatic immunity.

The fierce jealousy of national elites over their territorial integrity has tended to obscure the vigor of this trend. The willingness to share is sharpened as one moves from territorial limits to shared international resources. The air and space, for example, can serve as critical instruments for intelligence gathering. Claims of sovereignty over air space are generally recognized, though their diffusion increases proportionately with their elevation. Yet President Eisenhower enunciated an open skies policy for purposes of passive intelligence gathering and his pronouncement has become, for the most part, accepted international law.¹¹⁵ These examples are considered here as indications of radically new and, for the most part, sound authoritative international policies in regard to the collection of security intelligence.

IV. POSSIBLE DEVELOPMENTS

The purpose of the projective task, as noted earlier, is not to suggest or insist upon the inevitability of some particular model of the future. We make no claims to powers of neo-prophecy. By contemplating a range of alternative futures, observers may, however, become more capable of relating the significance and contribution of contemporary behavior to the realization of one or another of the range

115. See note 52 *supra*.

of desired futures.¹¹⁶ We may thus increase the possibility of choosing current options which will most probably optimize our goals in the future. This operation does not involve "creating" the future,¹¹⁷ but rather projecting a spectrum of futures from which a flow of imaginative feedback increases the rationality of our own purposive behavior.

The technique of the developmental construct facilitates the projection of a range of complex futures. We consider two extremes: the most pessimistic projection and the most optimistic. The optimistic model must obviously involve a fleshing out of the more general policies developed at the outset of this chapter, a depiction of the optimal global intelligence function in a world order of human dignity. The pessimistic model, in contrast, depicts the utter failure of these policies. No matter how inevitable this latter construct may seem at this point in time, it need not occasion a paralysis of gloom; rather it should be taken as a challenge to alternative thinking. The extrapolation of a complex present into the future may permit appraisal of the credibility of each of these constructs, as well as of a variety of other potentialities lying between these two extremes.

Excluding the annihilation of our species, the more pessimistic construct of a future world order is that of "the garrison state," in which social order is thoroughly militarized and bureaucratized and in which knowledge is centralized to further increase the power of the elite.¹¹⁸ The projection of such a garrison state, of course, represents the greatest deviation from our overall goal of a world order of human dignity, in which, in particular, power is shared. The more specific effects upon the instrumental goals of an optimal intelligence function can be examined systematically. This requires the testing of outcomes against the postulated criteria of comprehensiveness, dependability, selectivity, creativity and availability.

Comprehensiveness of focus in a garrison state construct will suffer in a number of ways. Because intelligence will be husbanded as a base of political power, large numbers of participants will be consciously excluded from sharing in intelligence. Yet one crucial component of

116. For a thoughtful comparative discussion of conceptions and methods of projection in the intelligence function, see K. KNORR & O. MORGENSTERN, *supra* note 63, at 3-35.

117. One notes, in this respect a striking symmetry between future-thinking and past-thinking and, in many instances, the easy interchangeability of the activities. Primitive myth-making and its contemporary historiography were often disguised future-thinking and were almost always future-oriented. In cultures in which time conceptions are cyclical or circular rather than linear, there is obviously no difference between the two activities.

118. Lasswell, *Sino-Japanese Crisis: The Garrison State Versus the Civilian State*, 2 CHINA Q. 643-49 (1937); H. LASSWELL, *The Garrison State and Specialists on Violence*, in THE ANALYSIS OF POLITICAL BEHAVIOUR 146 (1947).

social knowledge is the combined experience of each inimitably unique individual. In this respect, optimally comprehensive intelligence is an intelligence process in which participation is maximally shared. By its very dynamic of restriction of participation in intelligence, the garrison state attenuates the focus and hence the ultimate effectiveness of its intelligence function. Garrison statehood disseminates knowledge on the basis of "need to know," a suitably ambiguous formula whose content reflects the shifting power of elites. The result is that plenary intelligence is never made available, either to intelligence specialists or to those charged with the execution of other decision functions. In particular, new technical innovations which are deemed to have power potential will be kept secret. The cognitive maps with which each individual is expected to operate are not as comprehensive as they might be and all decision functions suffer. Comprehensiveness will also suffer in the garrison state because the resources needed for exploration and investigation of the plenary range of value concerns of the community will be concentrated, instead, in those sectors promising a high power return for incumbent elites. In most cases in the past, this has involved intensive research in the instruments of destruction rather than production.

Dependability suffers equally in the garrison state projection. The reduction of intelligence to a patent base of political power politicizes every participant in the intelligence process. Hence the communications of scientists will increasingly reflect concern for their own positions rather than for the truth. This type of "Lysenkoism" does not exhaust its perniciousness in immediate political communication. Insofar as intelligence continues to retain some premium within the entire social process, information which is purposely falsified, suppressed or distorted affects behavior, through time, in all sectors. The low dependability of intelligence will warp the performance of every decision function, for the products of the intelligence process are of paramount importance in each.

Selectivity, it will be recalled, is a preferred process of constantly shifting and reappraising the use of limited resources in relation to those areas most crucial in the comprehensive intelligence map. As such, selectivity is intensely responsive to the goals of those elites charged with selection. From the standpoint of the observer, optimum selectivity involves the use of resources in a way best designed to maintain a world public order of human dignity and, in particular, to sustain the efficacy of appropriate decision processes. The greatest and most persistent deviation from this goal recurs in the garrison state. Resources are allocated in accord with the purposes of specialized elites

and not in accord with community objectives. Little relevance is attached to common interests.

There is abundant evidence for the fact that creativity in the intelligence function suffers enormously in a garrison state.¹¹⁹ The cognitive map of intelligence specialists is constricted, foci of attention are determined by elite interests, and the politicization of the entire process makes individual survival more probable if investigators follow the safe, conventional and well-worn path rather than jeopardize themselves in new ventures of creativity. Beyond this, the experience of intelligence participants attests to the need for openness as a condition requisite to creativity: an effort at constriction of creativity results in a restriction of creativity.

The availability of intelligence to a wide range of participants suffers in a garrison state. It is obvious that information is made available to the rank-and-file only insofar as such dissemination furthers the aims of the effective elites of the garrison state. Even among elites themselves, ready availability of information decreases because information, as a base of power, is guarded and not shared freely with those momentarily charged with decision responsibility.

Hence, it is clear that a dominating feature of a garrison state world construct, viewed against the goals of a preferred world public order and of the specific instrumental policies of the intelligence function, must be a regressive intelligence function. Such a crippled function will contribute far less than required for the rational performance of other particular decision functions and, as a result, lower even further the rationality of aggregate decision processes. That such a construct produces irrational decisions, should not, however, be viewed as of itself a dynamic for systemic self-improvement; the motive force of a garrison state is not the common interest, comprehensively understood, but the special interests of ascendant elites and mid-elites. As long as these special interests are realized, the intelligence function and all other functions are viewed by effective participants as adequately acquitting themselves of their obligations. While the observer may consider these and other decisions as bizarre, effective participants may not. In the recent past, changes in public order (as opposed to changes in elite personnel of garrison states) have come from without.¹²⁰

An entirely different construct projects the intelligence function in a world public order of human dignity. In such a construct, values are widely shared and intelligence is regularly mobilized to clarify and aid in the implementation of common interests. The instrumental

119. E. SHILS, *supra* note 15, at 176-91; S. KENT, *supra* note 3, at 174-75.

120. *But see* C. FRIEDRICH & Z. BRZEZINSKI, *supra* note 3.

policies which we have considered earlier would of course fare better in this projection.

A wider sharing of knowledge would lead directly to a more comprehensive focus for the intelligence function, for it would be comprised of the social reality of every individual of the world community. At the same time, unrestricted dissemination would permit each individual to expand and update his own cognitive map of reality and, as a result, increase the comprehensiveness of his own contribution to the intelligence process. Comprehensiveness will be further increased by broader and more effective education. This development will be accompanied on the institutional and transnational level by the proliferation of governmental and non-governmental organizations specialized to knowledge.

Dependability of the products of the intelligence function would also increase in a construct of a public order of human dignity. The general openness which would characterize the intelligence function would make communications more honest and more subject to verification.

Selectivity and relevance would be governed by the continuing concern to clarify common interests and to allocate intelligence resources which would most facilitate the ongoing realization of such interests. Greater interdependence would both increase the production of knowledge as well as the utilization of knowledge. At the same time, plenary participation by all in the function would assure a selectivity responsive to common interests.

We have observed that creativity in the performance of intelligence function tasks is lowered in restrictive and intensively controlled environments. The converse—that creativity flourishes in a public order of human dignity—cannot be inevitably foretold. On the other hand, there is ample data to suggest that creative activity requires the freedom for participants to formulate their own cognitive map and calculus of inquiry.

The positive and negative constructs we have essayed involve integral sets of conditions which cannot be treated here in systematic detail. The conditioning factors which attend the garrison state construct may be strong enough to sustain that trend. The comparatively poor intelligence performance of the garrison state (in terms of the internal rationality of the process under consideration as well as in terms of the preferred goals of the observer) does not, as we have emphasized, mean that garrison state elites themselves will initiate changes toward a more open public order system. The garrison state is an instrument for the accomplishment of the special interests of its

elites and rationality is defined exclusively in those narrow terms. Nor can intelligence specialists themselves be expected to initiate changes, even though the garrison state which they serve is the antithesis of the myth system of their own skill group: Garrison statehood means continued dependence by knowledge specialists for support of their activities upon the power elites themselves. At the same time, skill group support for those members sharing common perspectives may be expected to further erode the quality of the intelligence process. The special interests of the intelligence group will impel members to give credibility to their confreres on the basis of common identity rather than on grounds of veracity.

The constellation of conditioning factors attending the more positive construct of future world order may also tend to sustain such a trend. One result of general openness is that an increased number of base values will be available for intelligence products from sources other than power factors. Hence more specialists of knowledge will change their personal goals and such changes will be accelerated by the comparative ease of access to technology and knowledge. A further feature of this cluster of factors will be the increased capital investment available for the production of specific and sophisticated knowledge.

The technique of the construct involves systematic and disciplined imagination of the future in order to set contemporary options and their value significance over time into the highest relief possible. The observer may, as well, essay shorter-term conceptions of the future based on limited extrapolations of trends and conditions. From our prior analysis of the intelligence function, six major trends appear to be sufficiently strong to sustain themselves in the short-term future and, in turn, to maintain and engender further effects. Briefly stated, they are as follows:

1. There will continue to be an increase in all knowledge.
2. The existing geographical inequalities in intelligence capabilities and performances will continue. Where intelligence is already recognized as a function of crucial importance, it will become more important, even as it is upgraded in currently underdeveloped areas.
3. The technological capacity of intelligence to reach and inform every individual on the globe has been limited in the past by a comparable technology of increasingly efficacious non-disclosure and/or fabrication of false information. Many of the inadequacies of global intelligence in the past can be traced to this dialectical stalemate of technologies of permeation and of non-disclosure. We may expect this process to continue.

4. The trend toward non-disclosure and fabrication may, however, be deflected at a later point in time by increasing demands by people for access to vital information. Such demands are a source of disaffection in the current world arena and should they accelerate, they may precipitate a major change in world political order and, derivatively, radical changes in the allocation of intelligence about the globe.

5. Projected limitations on unimpeded access to comprehensive intelligence flows may have large scale detrimental effects on human creativity in the future. Because creativity is a function of access to the entire context, any limitation of such access will impede creativity.

6. Future increases in the availability of intelligence either within component communities or in the entire global community may well have an effect contrary to that which was intended, if certain preparations are not made. Thus, a sudden increase in intelligence may cause a systems or load breakdown on administrative levels, until provisions are made for handling the increased quantities. On the personal level, gross increases in intelligence may cause enormous discontent and disaffection or privatization and withdrawal from political processes.¹²¹ One indication of such a trend, which is already evident in a number of civilizations in which intelligence is comparatively freely shared, is the deflection of creativity toward the expressive, the emergence of patterns of stylized art, and the creation through esthetics of private worlds.

V. ALTERNATIVES

Positive and negative constructs of the future are developed only to spotlight opportunities for creative intervention. We consider a few such alternatives systematically in the framework of phase analysis of the intelligence function.

Participants

One important opportunity is to direct effort toward increasing the organized inclusiveness of the intelligence function on a global scale. It is now perceived how urgently this is needed for the maintenance of "security" in the broadest sense, including both protection against military attack and the conservation of the environmental resources upon which all values depend. Its urgency is no less for every other facet of global social process. The world constitutive process requires, on the international governmental level, new global and regional

121. C. WRIGHT, *MASS COMMUNICATION: A SOCIOLOGICAL PERSPECTIVE* 11-20 (1959).

machinery with facilities and resources adequate for the comprehensive and dependable gathering, processing and dissemination of information relevant to constitutive and public order decisions. The products of such an "Intelligence International" or "Global Knowledge Center" should be made freely and widely available to people everywhere.

The intelligence functions of extant organizations should, at the same time, be strengthened. Organizations such as the United Nations Secretariat, the organs of the General Assembly, the ILO, the FAO, UNESCO, WHO, WMO, IMCO, IAEA, ICAO and so on, already comprise a world intelligence grid which could be improved to play a more effective role.

Comparable efforts need to be taken on the national and local level. Adequate global intelligence is dependent upon contributions from every region and locality. Few even of the most mature national communities have developed adequate structures for intelligence and planning.

At the same time, there should be full development of a range of effective intelligence facilities in the civic order as a means of increasing the comprehensiveness of focus and participation, as well as for preventing any monopolization of the intelligence function. Any consideration of the intelligence resources of a community should, thus, include such private associations as professional groups and research institutes.

Each of these recommendations is designed to increase participation and to deter the formation of functional monopolies of either the gathering, processing or dissemination of knowledge. The realization of these preferences can be further facilitated by initially severely limiting, and in the degree possible ultimately abolishing, secrecy. Instrumental policies such as "open skies" and "open seas" for the gathering of intelligence should thus be maintained, particularly for international agencies.

Perspectives

The best contribution of the intelligence function will not be in "neutral" intelligence products in specific value areas. It will rather be in the effectiveness of an entire global process committed to the realization of human dignity. In this respect, the perspectives of all who are involved in the sequences of intelligence activities are exceedingly important. It is urgent that those involved in the intelligence function achieve a measure of world identity with the corresponding demands and expectations. These identification patterns can be established and sustained by training, and this is a function for which the

contemporary media are optimally suited. Numerous other promotional techniques are available to develop such identities, all of which can give premium emphasis to the most inclusive symbols.

The cognitive map upon which are based the matter of fact expectations about the past and the future is as crucial for groups as for individuals in the performance of the intelligence function. It is becoming increasingly apparent that constricted cognitive maps are in great part the result of acculturation and maleducation. Accordingly a range of programs should be developed to aid individuals in constantly expanding their personal frames of inquiry; at the same time, there should be a regular cross cultural appraisal of the comprehensiveness of the cognitive abacus of entire cultures.

Arenas

The effectiveness for an order of human dignity of the expanded intelligence organizations which we have recommended will be, in no small part, dependent upon freedom of access to such organizations and the availability of their products. Everyone in the world should have an opportunity to be part of the intelligence process regarding decisions affecting their lives. Such participation will involve not only the more obvious changes in political institutions about the globe, but equally radical changes in primary and secondary education; it is in these sequences that the capacity to play meaningful roles in intelligence as in all other functions can be decisively imprinted.

The effectiveness of arenas of intelligence depends not only on unrestricted access, but also on a degree of compulsoriness in the acquisition of information sufficient to bring to the focus of attention of intelligence specialists the data necessary to make rational decisions about matters of inclusive interest. Where intelligence has been employed as an instrument of power elites, a high degree of compulsory power has always been available and has frequently been abused. Where intelligence has operated in civic order settings, in contrast, a sufficient compulsoriness has not attended intelligence gathering. The need for compulsoriness varies with context; in an order of human dignity in which there is clear perception of and intense identification with the common interest, voluntary action will often supersede the need for compulsory action. In public orders which diverge from such a preferred model or in orders which are moving toward a preferred model, the degree of compulsoriness will thus be inversely proportional to the deviation from a structured system of human dignity. In these circumstances, choices about the uses of coercion for intelligence gather-

ing will have to be made. Orienting frameworks and policy recommendations for lawful coercion have been developed elsewhere.¹²²

Base Values

The authority provided for an effective intelligence function should be sufficient to protect the recommended features of that function. Authority should approximate the assets needed to keep knowledge expanding at a high rate.

Because intelligence is itself a crucial base for further intelligence, monopolies of information must be forbidden. There must be a strong demand for the sharing of enlightenment, and skill and power must not be used to restrict this diffusion. This is an alternative which can be pursued on both the national and international levels. National agencies, by virtue of their territorial competence, may require international cartels to divest monopolized information as part of the price for pursuing values within the territorial jurisdiction of the state concerned. International decision processes may forward a similar demand. Governmental agencies on the national and international level may themselves be required to pursue a policy of **maximum disclosure**.

A functional check on intelligence monopoly can be provided in a system of multiple sources of information, such that no single intelligence unit can acquire an effective monopoly of information: coarchical groups may acquire the same knowledge and divulge it. The encouragement of multiple sources involves incentives for the establishment of intelligence production units in both the public and the civic order, in official processes as well as in private institutes, and in the dispersion of intelligence producers in all public order systems and in all regions about the globe.

Checks on information monopolies may be further facilitated by the establishment of world networks of scientific laboratories and universities controlled by international organizations. The inclusive character of the global intelligence function may be further extended by expanding the role of the United Nations and other international organizations.

Inclusive control over the dissemination of education, knowledge and skill can be further consolidated by viewing all media as public utilities. Authoritative action to accomplish this has been recommended in a number of states, but there has been a tendency to confuse problems of ownership with those of effective supervision. It is the latter

122. M. McDUGAL & F. FELICIANO, *supra* note 54; W. REISMAN, *supra* note 24, at ch. 18.

which is crucial and which must be secured, even where there is effective public control of media.

Strategies

Any grand design for improvement of the intelligence function will adapt the gathering, processing and dissemination of information to the five distinguishing dimensions of problem-solving in the decision process. The first requirement is to assume the overriding goals to be sought through constitutive and public order decisions. The second requirement is to obtain the factual data that show the degree to which these goals have been realized, or failed of realization, in trends to the present time. The third requirement is to identify the sources for obtaining the most dependable scientific interpretations of the direction and magnitude of these tendencies. The fourth task is the projection of alternative versions of probable future developments. Finally comes the consideration of immediate policy objectives. Account must be taken of the probable course of future development and the costs, gains and risks of alternative sequences of policy action. Since the demands of decisionmakers for intelligence are often of great urgency, procedures must be available on a standby basis to reach all relevant sources promptly. Secrecy barriers are especially important in crises, since judgments based on rumor, deception and half-truth are unsatisfactory guides to action.

To the degree that the world arena remains divided and latently hostile, the individual nation-states will adopt strategies intended to protect their own security secrets and discover the corresponding secrets of potential enemies. In developing periods of crisis these double functions absorb the capacities of specialized intelligence services. The ultimate confrontation occurs when elite A decides to mount a surprise attack on B. The principles of successful deception can be studied to advantage in such cases as the Pearl Harbor attack by the Japanese, the massive assault on Russia by the Germans, and the Allied invasion of Europe in World War II. The future protection of a more satisfactory world order will presumably dispense with surprise attacks save in circumscribed police raids; it would be foolhardy to assume that the element of surprise will be dispensed with entirely in the immediate future. The task of intelligence services that protect incipient world order will be to guard against surprise. Consequently, it will be important to analyze cases of successful deception for the purpose of improving the strategies of discovery. The conditions of surprise attack must be understood if surprises are to be unmasked.

Roberta Wohlstetter's analysis of Pearl Harbor emphasizes the ambiguity of authentic warning signals as the main explanation of surprise.¹²³ The "noise," including the deceptive information that surrounds the authentic signals, is said to contribute to this ambiguity. Barton Whalley's study of the German invasion of Russia presents a different analysis. He argues that "the purpose of disinformation is to reduce ambiguity, confusion, and uncertainty by making its victim more certain and wrong."¹²⁴ Hitler succeeded in convincing Stalin that he would invade Britain before turning East, and that he would, at most, use the huge German forces along the Russian frontier to issue an ultimatum that Stalin could afford to accept. Stalin believed that he needed to buy another year of preparation before he could fight Hitler.

It would be a great boon to world security if espionage were rendered obsolete and if, as a step in this direction, more espionage services were to pool their information, especially when weapons or planned violations of public order are involved. The cultivation of cross-boundary contacts among scholars, scientists, and officials is a long-term means of diminishing the probability that secrecy can be maintained. World public order requires openness; and strategies of openness include the supplementation of official channels by structures under civic control, or run by official agencies not closely aligned with superpower or great power coalitions.

Intelligence activities utilize aptitudes of many kinds. Projecting the future appeals to independent and imaginative individuals who are disciplined, though not overawed, by the results of formal extrapolations of trend, or by summaries of scientific results. Similarly, creative innovators of policy projects often differ from systematizing scientists or meticulous historians. To an increasing extent relatively developed societies are concerned with specialists on the policy process itself who use deliberately iconoclastic approaches to stimulate the invention of new policies.

Another characteristic of developed societies where popular government prevails is general participation. This means that in many communities the experts, public officials and citizens from every social stratum work together.

Intelligence agencies are most broadly connected with the public when the task is to disseminate processed information to the community at large. The recipients will often continue to be severely restricted in number so long as war or threat of war continues, and security requirements include the tactics of secrecy and deception.

123. See note 69 *supra*.

124. B. WHALLEY, *THE BARBAROSSA CODE* 224 (1973).

As more people identify themselves with the welfare of the world community as a whole, the tensions surrounding secrecy will become more severe. Competent scientists and scholars will feel justified in violating "unreasonable" secrecy regulations made by nation-states. Presumably the tactics on behalf of secrecy will become more stringent under these conditions, and the conflicts will multiply. Professionally trained persons will become more acutely conscious of the latent contradictions between client-serving and citizen-participation in the world community.

The scientists of society know that a key question for the future is whether or not the spectacularly changing technology of knowledge, and especially knowledge of society, will be in the hands of a limited class or caste that serves its own interest. The alternative is to share the control of information widely among territorial and pluralistic groups. Unless they are able to obtain access to comprehensive stocks of information, individuals and groups will be blind judges of public policy. Their protests can be dismissed as the fruit of ignorance and bias. Lacking access, critics will be unable to develop realistic alternatives to policies sustained by governmental or private monopolies of knowledge. If we concede that "knowledge is power," popular government requires that access to information must be prompt and total.

Computer technology supplies the means of storing, processing and distributing the information required for realistic judgments to be made on policy questions. Part of the problem is to authorize effective access, while at the same time protecting legitimate claims to privacy. The computer is enormously important because, in principle, it can provide everyone with prompt access to a concise and selective "map of the whole." Every phase of any process of value shaping and sharing can be made apparent to anyone who is active at any point within it. In a corporate enterprise this applies from the highest executive to the humblest laborer.

The availability of the new intelligence instruments emphasizes two politically crucial points: one, the importance of obtaining technically competent advice for the guidance of laymen; two, the changing content of education. In developed societies it is customary for every interest group, when it becomes aware of itself, to obtain legal and other forms of technical assistance. If general participation is to become more effective it will be necessary to provide educational opportunities that acquaint everyone with the fundamental map of the world. It is not a question of mastering detail—which is an expert's task—but of comprehending the political, economic and other contours of the globe. The problem is to focus attention on the salient features of past,

present and future events. The population at large can share a common map with the specialist, and live in a context that he feels at home with. It is alleged that some tribal societies were able to provide an inclusive map for their members. The current challenge is to achieve the equivalent result on a world scale. Several innovations have been proposed to aid in the accomplishment of this purpose, among which we mention continuing seminars and the social planetarium.

VI. CONCLUSION

Basic to any body politic is the realism of the judgments that enter into the stream of public decision. Fundamental to judgment is intelligence which is the gathering, processing and dissemination of problem-identifying and problem-solving information. The five intellectual tasks are the clarification of goals, the description of trends, the analysis of conditions, the projection of developments, and the formulation of policy alternatives. The intelligence process is responsible for locating all sources of knowledge that may be useful to decisionmakers, and for the mobilization of the information relevant to questions of immediate importance.

In a more interdependent world special interests will find themselves under informed attack. They can be expected to resist the dissemination of intelligence that may be used to undermine their position. Crucial to the outcome will be the willingness of men of knowledge to identify with the common goals of world public order and to strengthen civic initiatives that support a public order compatible with the dignity of man.

The development of an adequate intelligence function calls for cooperation among official and private agencies. The model of Interpol may be simulated by "Interspy," a service that draws upon the sources available to all organizations willing and able to work together to expose threats to world public order. Computer technology can be employed to provide a dependable, and balanced picture of past, present and future events. Authoritative and controlling arrangements are needed to allow access to this picture by all territorial and pluralistic elements in the world community. Educational practices must be transformed in ways that familiarize the population with the world situation as a whole, and with particular localities and sectors. Satellite systems provide the channels required to achieve universal programs of education, and to encourage alternative versions of controversial matters. Intelligence policies aim at raising and sustaining the quality of two overlapping streams of information; one is primarily directed to the

adult audience, the other is mainly aimed at the young. The function of the latter is to cultivate predispositions that enable members of the world audience to utilize information effectively, and to exert continuous pressure on public and civic organizations for the adequate performance of the proper tasks of intelligence.

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